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Wednesday 19 June 1991

Select committee on
Ontario in Confederation

Ministry of Intergovernmental
Affairs

Assemblée législative de l'Ontario

Première session, 35^e législature

Journal des débats (Hansard)

Le mercredi 19 juin 1991

Comité spécial sur le rôle de
l'Ontario au sein de
la Confédération

Ministère des Affaires
intergouvernementales



Chair: Tony Silipo
Clerk: Harold Brown

Président : Tony Silipo
Greffier : Harold Brown

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Table of Contents

Table of Contents for proceedings reported in this issue appears at the back, together with a list of committee members and other members taking part.

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Table des matières

La table des matières des séances rapportées dans ce numéro se trouve à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et des autres députés ayant participé.

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au (416) 325-7400.

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

Wednesday 19 June 1991

The committee met at 1547 in room 151.

MINISTRY OF INTERGOVERNMENTAL AFFAIRS

The Chair: I call the meeting to order, and for those people who may be following us at some point during this week over the parliamentary channel, I remind them that this is a meeting of the select committee on Ontario in Confederation.

We have with us this afternoon two people from the Ministry of Intergovernmental Affairs, Stephen Bornstein, who is the representative of the government in Quebec, and Daniel Cayen. I will turn it over to Mr Bornstein first in terms of making a presentation on some of the events in and around Quebec and giving us some background on those issues.

Mr Bornstein: Let me start by telling you a little bit about who I am and what my function and office are. My position has a really quite lovely title in French and is not quite as snazzy in English. In English I am senior Ontario representative to Quebec; in French I am the *délégué général de l'Ontario-Québec*. I rather prefer the French version.

This position has a brief but solid history. It was created in 1985 as part of a move by the government of the time to improve relations with Quebec after the period of difficult interactions following the Quebec referendum. It has had two previous incumbents, Don Stevenson and then David Cameron. There has been a recent shift in the nature of the position, a minor one, in that for the first time I am a full-time Ontario representative in Quebec. The previous representatives spent part of their month in Toronto, sometimes part in Ottawa—that was the case of the first occupant of the job—and then part of the time in Quebec. I am in Quebec full-time except for brief stints in Montreal, given the business community and the unions, and a lot of associational life and governmental activity go on in Montreal. I make visits here to brief the ministry, or to be debriefed by the ministry.

We have set up, as you undoubtedly know, a parallel office in Ottawa. Each is staffed by an assistant deputy minister of intergovernmental affairs so that these positions are not political positions; they are civil service positions within the Ministry of Intergovernmental Affairs, whose minister, as you know, is the Premier, and whose deputy minister is Judith Wolfson. I report to the deputy.

My responsibilities are rather complex. They involve being the eyes and ears of the Ontario government in Quebec, with all that entails, keeping the government here informed about the latest developments in Quebec, both in terms of the content and in terms of the meaning in so far as I can figure it out. I provide communications links in both directions. I also do my best, the way any of Ontario's representatives outside Ontario do, to present a good, healthy,

creative image of Ontario, of what Ontario is, of what Ontario does.

There is a trade component. There is a tourism component. There is a general representational function; going to ceremonies. For example, there was a ceremony organized by our Speaker, the Quebec Speaker and the Speaker's office at Westminster to celebrate the 200th anniversary of the 1791 Constitution. I was there in an official capacity. There is some ceremonial function. I also supervise co-operation activities between the two provinces through the auspices of an institution called the OQCC, the Ontario-Quebec Commission for Co-operation.

To give you a little bit about my background, I am not a career civil servant. I am an academic. I have taken a leave of absence to serve my province in this capacity.

My early experience in this job has been extremely pleasant. The Quebec government was very pleased to have a permanent representative there and did everything it could to make me feel welcome, to give me briefing sessions, to take me on a round of meetings to meet various deputy ministers who might be of interest to me in my new function. Thus far, the relationship has gone very well, at least from my own personal perspective.

What I would like to do now is to begin with some background material for the understanding of Quebec's current constitutional posture and its current process.

The key event in all of this, as everyone is aware, is the failure of Meech. For Quebec, Meech was very important. They saw it as undoing, setting right, making good what they saw as the humiliation of the 1982 Constitution, the betrayal of what they call "the night of the long knives."

Their argument was that in the referendum campaign then Prime Minister Trudeau campaigned very hard in Quebec, promising a significant overhaul of the structures of Canadian federalism in return for a no vote. Quebecers read that to mean a substantial redistribution of powers. That, it turned out, was not what they got. They got instead the 1982 Constitution, which they did not sign, and they regard that Constitution as in many ways a betrayal of what they thought was going to happen.

It is very interesting to note how different their perception of 1982 is from the perception in much of English Canada. In much of English Canada, 1982 is regarded as a great step forward. After all, we got the Constitution back to Canada. After all, we got a charter. In Quebec, it is regarded very differently. It is regarded as establishing a Constitution without the second biggest province. It is regarded as establishing a charter which, for many Quebecers, is a problem.

It is a problem partly because they see it as a symbol of the betrayal of the night of long knives. It is a problem partly because it is seen as an embodiment of Pierre Trudeau's supposed assault on Quebec's collective rights

in the name of a liberal, individualist vision of human rights which they attribute to Trudeau.

The charter is also regarded as a problem because it is felt the charter has created—and here a number of English Canadian constitutionalists agree with this position—a series of charter groups which have attached themselves to the charter, set themselves up as the constitutional equivalent of the two founding peoples, and therefore made it extremely difficult for a constitutional settlement to be reached which Quebec can accept.

So the charter, for Quebec, is something very different than it is for us. It is not that there is a rejection of individual rights, although there is some debate about which rights are fundamental and which are not, but it is that the charter means all sorts of things to them that it does not to us.

The failure of Meech to take a step forward was regarded rather as a step backward. It was regarded as yet another humiliation by English Canada of a well-intentioned Quebec. Quebec presented five demands. Those five demands were not regarded as excessive or radical, but rather as Quebec's minimum for joining the Constitution and English Canada said no.

The current situation in Quebec, Quebec's current constitutional process, derives from an attempt by the political leadership of Quebec to think through what happened at Meech, to think its way past Meech and to find an alternative. This is being done in a context of a rising nationalist tide, particularly among people under the age of 25 or 30 who responded very angrily to the failure of Meech and who now respond very favourably to calls for sovereignty, for Quebec independence.

Mr Bourassa's response to Meech was to unleash two parallel processes which have now converged. The two parallel processes were the Quebec Liberal Party's constitutional committee, the Allaire committee that produced the Allaire report, and second, the Bélanger-Campeau commission, which produced a huge report that is the basic document on the political and constitutional future of Quebec. Those two processes have now converged in the last couple of weeks in a legislative enactment called Bill 150.

What I would like to do in the next section of my presentation is to take you through each of those elements of the process, Allaire, Bélanger-Campeau and Bill 150, just to try to set a context for you. I may very well be telling you all sorts of things you already know, but let me do it and then perhaps we can clarify things in the question period afterwards.

To take Allaire first of all, in March 1990, that is, before the collapse of Meech, the Liberal Party of Quebec, which is an independent provincial party with no formal connections to the Liberal Party of Canada, and is Mr Bourassa's party, the governing party, started a process to review its own constitutional platform and to prepare for l'après Meech, which was seen as either what to do in the round of constitutional talks after Meech succeeded—one possibility—or what to do if Meech failed.

Once Meech actually failed, Mr Bourassa and the party shifted on to that other track, that is, what to do now that Meech had not worked. The Allaire committee, after a series of consultations within the party, produced a document

that ended up being considerably more radical than what most observers and most political actors had expected. The document was made public at the end of January and then submitted to and endorsed by the Liberal Party's congress in the middle of March of this year.

You will have seen in the papers reports of the floor dynamics at that conference. The debate was dominated by sovereignists, and in particular was dominated by the youth wing of the party. What was most striking at that conference was how quiet the federalists were.

1600

The contents of the report, very rapidly: a stinging critique of existing federal arrangements at some length, with a heavy emphasis on what are called overlaps, wasteful duplication of policies, programs, spending and efforts between the two levels of government, plus strong criticism of federal fiscal arrangements for failing to benefit Quebec.

That stinging critique is accompanied by proposals for a drastic redistribution of powers towards the provinces and in particular towards Quebec. If Allaire were enacted as a constitutional document, 22 powers would become exclusively provincial jurisdiction, with no federal involvement. Eleven of those are currently provincial, but subject in one way or another to federal activity via the spending power. Another 11 are currently either exclusively federal, concurrent or in federal hands through the residual clause. The federal government, in the Allaire vision of how Canada would work, would be left with a very short list of leftover powers.

Allaire also included a number of other proposals which have received less attention in the press, but which are also quite important. First of all, Quebec gets a veto. Next, the Senate, in its current form, would be abolished. Amendments were introduced on the floor that suggested a possibility for other types of Senate, but the report itself just says the current Senate will be abolished.

There would be created a new judicial body with the title of a community tribunal—it is hard to translate the French, but the French is not all that limpid either—whose function would be to adjudicate disputes between different levels of government, to adjudicate the distribution of powers. The Bank of Canada would be restructured to give regions, in particular Quebec, seats and influence. Economic union would be improved and intensified, and finally any province would have the right to secede with sufficient notice.

We have the critique of existing arrangements, the proposal for a drastic redistribution of powers, proposals for other important institutional changes and then a process for implementing these proposals.

The process recommended by Allaire and endorsed by the Quebec Liberal Party's congress was that the Quebec government should propose to the government of Canada the contents of the Allaire document. Depending on what the government of Canada then did in response, Quebec would hold a referendum before the fall of 1992, either on the Allaire proposals if the rest of Canada accepted them, or on sovereignty. Furthermore, the government would establish a committee whose job it would be to examine the

implications of sovereignty for Quebec society and the Quebec economy.

The reactions to Allaire from English Canada were quite vigorous. They ranged from caution to outright rejection.

After the floor fight and the clear domination of the party congress by the youth wing and sovereignists, Premier Bourassa went out of his way in his closing speech on the Sunday of that weekend to make statements clearly designed to appease federalists within the party, and in particular to appease cabinet ministers, Claude Ryan especially, who apparently threatened to leave the party if the existing hard sovereignist line prevailed. The result has been a vision from outside Quebec that there is some uncertainty about what the Quebec government really wants to do.

That is Allaire, then. That is the official policy of the Liberal Party, the governing party of Quebec.

Bélanger-Campeau is roughly speaking the counterpart in Quebec of this body, very roughly speaking, because as I describe it to you, you will see some fundamental differences, as well. Bélanger-Campeau emerged from the immediate Quebec response to the failure of Meech. Mr Bourassa and Mr Parizeau got together and reached an agreement that what was needed was a bipartisan, broad, consultative body to examine the "political and constitutional future of Quebec."

Each of the two major party leaders designated a Chair so that it was chaired by two people who were equally co-chairs. The leaders of both major parties, major cabinet ministers and shadow cabinet critics were members of the committee. Also included, to some people's surprise, were federal parliamentarians, including Lucien Bouchard of the Bloc québécois. In addition, the body included representatives of major non-elected groups: unions, business associations, co-operative banking institutions and the like—farmers' associations as well.

There were four months of hearings, broad consultations with a variety of groups and a long list of experts, lasting from November 1990 through March 1991, and then a report.

What is worth noting about the procedures at Bélanger-Campeau—and you will have noticed this on television and in the press—was the emergence of the Bélanger-Campeau hearings as a sounding board for the various varieties of Quebec nationalism. Federalists were notoriously silent during the hearings. Federalist presentations were not very well received by the commission, and they were fairly few and far between in any case. In the closing moments, however, as the commission wound down to its deadline for submitting a report, heavy pressure was clearly put on the commissioners to come up with a unanimous report. Unanimity was said to be required so that Quebec had a strong exterior face to show to the rest of Canada.

There was no real unanimity on content within Bélanger-Campeau, so the solution was to reach an agreement on process. As a result, the conclusions of the document were expanded to include a second strategic track. Rather than just sovereignty via a referendum, another option was added, renewed federalism, as a result of offers from the rest of Canada. The conclusions of the report then

took the form of a two-track proposal: either sovereignty or offers from the rest of Canada.

Let me go through the contents of the report quite rapidly. First, the report itself contains a very strongly worded critique of the flaws, inefficiencies, inequities and evils of the status quo, historical plus current sociological and economic—a list of what is wrong with the current arrangements, a set of conclusions. As I said, suddenly there are two options out there: a renewed federalist option that is federalism significantly decentralized, and a sovereignty option. It is worth noting that it is very hard to find anyone in Quebec, even people who identify themselves very strongly as federalists, who thinks the status quo is a good thing. Even the federalists support a very strongly decentralized federation.

1610

The conclusions: There are two routes presented as equal options, then the recommendations, and this is where the real battles, we are told, took place within the commission in the last few days and nights.

The recommendations, that is, the process proposed, were as follows: The government was to introduce a piece of legislation in the National Assembly by the end of the current session, that is, no later than the end of this month. The law was to make for a referendum on sovereignty no later than 26 October 1992. It was also to create two parliamentary committees, one of which was to consider offers that might come from the rest of Canada; we will call this the committee on offers. The other was a committee designed to study all questions related to sovereignty for Quebec—the costs, benefits, advantages and disadvantages—economically, socially, politically, demographically—of sovereignty. That is the committee on the sovereignty option. Those are the two committees.

You have the body of the report itself, the conclusions, the two tracks, the recommendations, this complicated process, and then a set of background papers of two sorts. There were papers commissioned from outside experts and papers written directly by the secretariat staff. In some cases, the outside experts were Quebec government civil servants, so there are inside-outside arrangements.

The focus of all these background papers was on what sovereignty would mean, what the implications of sovereignty were in various domains. There were legal scholars, various economic scholars, experts on banking systems and experts on demography, who all asked the question clearly, "What would happen if Quebec were sovereign?" The most widely read and discussed ones were on the economic costs and benefits and fiscal costs and benefits of Quebec sovereignty. These were written by the staff of the secretariat itself and their basic thrust was to minimize the cost of separation and present a separate Quebec as an economically and fiscally viable entity.

Mr Bourassa's approach to the report was a rather interesting one. He, Mr Rémillard, his Minister responsible for Canadian Intergovernmental Affairs, and Mr Ryan signed the report. Some people predicted they would not because it contained a commitment to hold a referendum on sovereignty. They signed it, but they appended something called an addendum to the report that qualified many of the key components of that report in interesting language,

which among other things asserted that the National Assembly remain sovereign at all times. The committees would exist and there was a law that would guarantee a referendum being held on sovereignty, but the National Assembly remained sovereign.

Another important clause of Mr Bourassa's addendum stated that the government, the cabinet, retained its freedom of action, its freedom of initiative and judgement, to consider the interests of Quebec in all circumstances.

Allaire and Bélanger-Campeau, the two fundamental documents, then converged in Bill 150, which is the piece of legislation which Bélanger-Campeau's recommendations told the government to introduce. Bill 150 is the confluence of Allaire and Bélanger-Campeau, but with a very heavy dose of Mr Bourassa's addendum. The bill asserts that there will be a referendum on sovereignty no later than 26 October 1992. The government, however, retains its freedom of initiative and appreciation and the National Assembly remains sovereign to decide all questions related to a referendum.

The two committees I described to you before are to be created, but they will be tightly controlled by the government. They are not Bélanger-Campeau-style committees. They are structured in the way that this committee is structured: only parliamentarians with a balance of membership more or less parallel to the outcome of the last election. The structure of the House is then reflected in the structure of the committee, which it was not on Bélanger-Campeau. Both committees are to be chaired by a member of the governing party, by a Liberal.

The committees exist only so long as the government wants them to exist, so they can be put to sleep at any time during the process if the government so chooses, or they can be kept alive even after a referendum. Mr Rémillard in answering questions in the National Assembly agreed that was the case. You could have a referendum, the referendum could say, "Yes, Quebec will be sovereign," but the committee on offers could remain in existence to consider last-ditch offers of political partnership or partnership of an economic sort, the economic association arrangement.

The committee on offers, which originally looked as if all it could do was sit there and wait to see what came in, now apparently, although it is not entirely clear, will be allowed to do much more than that. It will be allowed to consult with committees from other jurisdictions.

The committee on the sovereignty option, that other committee, has been charged with examining all issues related to sovereignty, including the disadvantages and costs. The argument of the government is that Quebec citizens should be fully informed about the implications of any choice they may make.

The current state of play of this bill: It has gone through second reading and its consideration in committee—that finished last night—and it will be, we are told, brought to the National Assembly, at the latest, tomorrow for final approval and should be passed without any trouble, given the large majority the Liberals have in the National Assembly. It appears the Parti québécois will vote against it. At present knowledge, one member of the Liberal party will vote against it. So there will be a substantial majority for

Bill 150, which then sets up Quebec's process for the next 18 months or so.

1620

To move from Quebec's process to its posture, which can be deduced in a way from my description of the process, Quebec is waiting for offers. Quebec leaders and apparently Quebec public opinion all feel that they have done their bit, that they have done their work, that they have served, that the ball is now firmly in our court and we should do something about it. Quebec has declared it will not participate in intergovernmental forums except and only when Quebec's higher national interests are at stake. That generally seems to have been interpreted as economic and fiscal interests. Quebec feels that its demands are clearly out there on the table—Allaire, Bélanger-Campeau, Mr Rémillard's speeches, Mr Bourassa's speeches—and it is now English Canada's turn, the rest of Canada's turn, and in particular Ottawa's turn, to move.

Quebec opinion: From the polls one can deduce that there really is a broad consensus that the status quo is, to quote someone we all know, a non-starter, that the status quo is unacceptable. There is a very strong current, in addition to that, of sovereigntist opinion. Some sovereigntists are very strong separatists; others have more ambivalent feelings about Canada, particularly as an economic unit. There is in addition a group of federalists, but as I said before there are not very many francophone federalists in the sense that we would think of federalists. There are federalists who want major changes before they will buy in. Then there is a large fluctuating group of public opinion that moves back and forth between one option and another, varying quite substantially from month to month and poll to poll, depending on what question is asked, on when it is asked in a list of questions, and on what has been happening in the public forum that week or that month.

That is Quebec's posture. Let me finish up with two brief bits of analysis: first, who is who in Quebec, and then what is up in Quebec.

Who is who, foreground and background: In the foreground is the obvious cast of characters. There is the Premier. We have his public statements. We have his documents. We now have a biography by Michel Vastel. We know quite a bit about him. There is his minister for intergovernmental affairs, Gil Rémillard, and there is the counterpart of our Deputy Minister of Intergovernmental Affairs, a woman named Dian Wilhelmy, whose official title is *secrétaire général adjoint*—associate secretary general. The reason she has that title rather than the title of deputy minister is that the organism she works for is a secretariat within their privy council, within their executive council. The executive council has a secretary general. He is the equivalent to our Peter Barnes. He has reporting to him a series of associate secretaries general, of whom Dian Wilhelmy is one, and she is responsible for an agency called the SAIC. It is the *Secrétariat aux Affaires intergouvernementales canadiennes*, the Secretariat for Canadian Intergovernmental Affairs, which I got right this time, but when you try to say it fast is a real tongue-teaser.

In addition to that, there are the two committees I described to you, which may very well meet once just to get started before the summer, but then will resume their activities in the fall with a considerable staff. It is rather like Bélanger-Campeau. There is only one staff. There will not be two separate staffs, one for each of the committees. It will be a joint staff with a secretary apportioning functions depending on which committee is meeting when and which committee has what sorts of needs. There will be one secretariat and a considerable budget for these two committees to undertake any hearings, consultations and studies, commissioning whatever reports they need.

According to the Montreal newspaper *La Presse* today, they think they know who the chairs of the two committees will be. It is thought that a likely chair of the committee on offers will be a member of the National Assembly named Claude Dauphin, who is currently chairman of their standing committee on institutions. That is the standing committee which did the committee work on Bill 150 last night. The other committee will be chaired by another Liberal named Guy Bélanger. The two committees, as I said, will have a single staff and I think the staff will be composed partly of people from the outside and partly of people seconded from various Quebec ministries for a short period of time. So that is the foreground.

Somewhere between the foreground and the background is a very important minister, Claude Ryan, who may play a significant role in constitutional matters because he is extraordinarily knowledgeable about these matters.

Behind the scenes are some people whom you have probably read about and will probably read more about. The closest adviser of Premier Bourassa on political matters and constitutional matters is Jean-Claude Rivest, who has been associated with Mr Bourassa for something like 20 years now and apparently is the source of most or many of his strategic, political and tactical ideas. In addition to Mr Rivest, Mr Bourassa is advised by his principal secretary, that is, the counterpart of our David Agnew, John Parisella, who is a man with a strong background in Quebec Liberal Party politics and a man who retains considerable influence within the party and within the government. The exact counterpart of Peter Barnes in Quebec is named Benoît Morin. Then there is a team of extremely skilled civil servants and political advisers in the secretariat called SAIC. The latest staff count I got for SAIC is about 85 people. So that is who is who in Quebec, very rapidly.

What is up, what to look for in the next few months, and then I will stop: The next few months should be fairly quiet. June 23 is when the session is lifted, barring unforeseen conflicts. Most members of the National Assembly will then go back to their constituencies and/or go on holiday. There will be big demonstrations on 24 June whose exact political tone, that is, whose content with regard to the government, is still a little hard to predict. The two federal reports, Beaudoin-Edwards and Spicer, will come out in very short order and Quebec will comment, although I suspect in a fairly low-key way, because what it is really focusing on is September-October, that is, the federal proposals. They are looking very carefully at what is coming out of Ottawa and they are going to pay very close attention to

the documents as they are released officially or unofficially in the countdown to September-October.

Real activity in Quebec will resume first in late or mid-August for starters, when the Young Liberals, the youth wing of the Liberal Party, meet. I think it is in the second week of August, and we can expect a very strong sovereignist statement and strong warnings to the government not to go back on its promise to have a referendum on sovereignty and to have it soon.

In an interview in today's papers, the president of the Quebec youth wing of the Liberal Party announced that his intentions were to make that sort of move in August, and the National Assembly will reconvene, we think, to examine a revised version of its health care bill, which has been taken off the order paper for the moment for consultation with the doctors.

Then in the early fall the National Assembly will get going on a full-time basis and those two committees will start meeting, commissioning studies, hiring staff, making announcements and having hearings. For the moment Quebec will be fairly quiet, but they are gearing up for 18 months of very significant constitutional activity.

Thank you for your attention. I will be delighted to answer any questions.

1630

The Chair: Thank you very much, Mr Bornstein, for that useful background. If there are questions, we can deal with those.

Mrs Y. O'Neill: It is helpful to have somebody who has been on the scene, so to speak. I wanted to ask you a little more about a couple of things you said. You just brushed polling very lightly. Could you say a little about what kind of polling is going on in Quebec and who is sponsoring it? We certainly get some of the reports, both through the *Gazette* and sometimes in our own newspapers here, on the results of these polls.

Mr Bornstein: There is lots of private polling going on. The Quebec Liberal Party does a lot of its own polling, just as many governing parties and opposition parties do. The PQ does a lot of its own polling. Occasionally it will release a figure or two, but mainly the polling I am talking about is the public record polling, and there is a whole series of polls connected to newspapers, sometimes newspapers linked to a radio station linked to a specific polling agency. Those polls come out regularly. Each of the polls tends to be repeated at a monthly or bimonthly interval so that one can track the evolution of Quebec public opinion on specific questions.

The problem is that the questions the different polling agencies ask are not always the same. Sometimes even a given polling agency will change its question from one time to another. The result is that there is a lot of fluctuation in Quebec public opinion. There is a lot of fluctuation in Quebec public opinion anyway. Note that support for sovereignty in the period since Meech went from the 20s to the 70s and back down to the 40s and 50s, all in the course of a year. That is really quite an extraordinary volatility.

I follow these things. The ministry follows them. It is worth taking a little bit of a step back from them, given

that we know how volatile they are, given how different the questions are from one to the other. They have to be treated carefully but they are quite useful.

The most interesting sets of polls recently have been the Angus Reid-Southern poll that you saw in the Toronto Star, which was covered in Quebec in the Gazette, that suggests a wide variety of things depending on which day's Star you want to read, among other things that there has been a downturn or at least a flattening out of support for sovereignty for the moment, but that there are very different visions in the rest of Canada and in Quebec about what are desirable outcomes.

There has also been a series of recent polls from almost all the polling agencies redoing their polls of two months ago, indicating that support for sovereignty—sometimes it is worded as “independence”—is down from a couple of months ago. In some cases it is only down by a few points; in some cases by as many as 10 or 15 points. One of the polls even put support for sovereignty at less than a majority of the population for the first time since Meech. That is an interesting finding. Other polls did not agree.

Finally there was the poll of the intention of Montreal Anglos, which caused quite an uproar when it appeared that a significant proportion of Quebec anglophones envisioned quite seriously leaving the province. That produced a flurry of letters to editors, discussions of possible language reform and recapitulations of the whole national unity and language drama in Quebec in the course of a short period of time.

Mrs Y. O'Neill: That is certainly in much more depth and I am happy for that. There is one other thing you touched on lightly and I am sure you can expand on. You talked about the possibility, or more than possibility, that Quebec will participate if its interests are at stake, if that consideration is made on an issue. Could you tell us a little bit more about what that means from your perspective.

Mr Bornstein: They sent their finance minister to the meeting of finance ministers, because it was announced there would be a discussion of fiscal transfers and equalization payments, if I remember correctly. He came. They do not participate, for example, any more in the Council of Ministers of Education, in which they used to play quite an active role. They have pulled out of that. In general they will not participate. They have said very clearly they will not participate at the highest levels in any meeting involving 11 first ministers. That is out. They will not go to annual premiers' conferences. They will not go to first ministers' conferences. They will not redo the Meech scenario, in which they felt they got rejected.

They will meet individual premiers; clearly they will do that. They have not excluded meeting more than one Premier; that is not yet clear. But they will not do the *à onze*, the 11 men in suits or now 10 men and a woman, and probably in blue suits anyway, in a room. They have said they will not do that. They seem to be considering it issue by issue, but the issues that get them to the room are economic ones. When the Constitution is at stake they will not come, they say.

Mrs Y. O'Neill: You said there will be hard work for 18 months. If I judge by my calendar, there does not look

to be 18 months between when you say they will begin avidly and when they—

Mr Bornstein: You obviously have a calendar. You can count better than I can. I am talking about their referendum deadline, so let's say to the end of 1992. What does that give us, 16 months?

Mrs Y. O'Neill: I do not think it is 18.

Mr Bornstein: It was 18 when we started this discussion and 18 has stuck in my head but you are right; the clock is ticking, as it were.

Mr Malkowski: Thank you for that background; that was very helpful. You said something about the Quebec perspective, that they seem to be ambivalent towards the Canadian Charter of Rights. What is their sense in terms of group rights, then, or individual rights within the province? I understood they had a lot of respect for individualism. What about native rights, the rights of the disabled, the rights of women and multicultural groups within the province? Where do they stand in Quebec? If they have a sense of individual rights, then where is the connection with these other groups?

1640

Mr Bornstein: Quebec has its own charter of the rights of the person, a charter of human rights, to translate it in a more elegant fashion. It contains most of the provisions the federal charter does. However, it also involves provisions for the protection and furthering of the French language. When Quebec talks about collective rights, it means the language and cultural rights of Quebec as a French-speaking minority in what it sees as a sea of English-speaking peoples. Their charter respects all the other rights we take seriously in Ontario and in the federal charter as well.

On the subject of native and women's rights, their texts look rather like ours. The issue for Quebec as I understand it is that the real question is which charter takes precedence, and whether the federal charter will take precedence over the language components of the Quebec charter and Quebec legislation. In Allaire there were a series of provisions and amendments which augmented and strengthened those provisions, guaranteeing the rights of cultural communities, the rights of anglophones—I am sorry, by cultural communities they mean allophones, immigrant communities, non-French, non-English—and guaranteeing the rights of aboriginal peoples. So their written commitment to human rights is rather like ours and looks rather like the federal document, except for this issue of language, basically, education and culture.

Mr Malkowski: What happens then with the first peoples, the native people? What happens to their land claims?

Mr Bornstein: Quebec is in the process of attempting to deal with land claims and attempting to work out its relationship to the first nations just as we are and just as many other provinces are. They have a broad mixture of different sorts of native peoples with different land claims, different relations to the government, some who speak French as their language, some who speak French as their second language, some who speak English as their first or

second language, some who have made quite substantial land claims, others who have not made such land claims, others who agreed back in the 1970s to sell land for the James Bay project and others who refused at that time. There is the same division now between native groups that are interested in talking about James Bay II and others that absolutely are not.

I guess I should say there is a perception in Quebec that the rest of Canada thinks it is extremely nasty to its natives. Their perception is that in terms of legal provision, in terms of provision of services and in terms of recognition of rights they have come an enormous distance in the last 10 or 15 years and that their record is as good as anybody else's. The record stands. It should be examined, but there is a very strong perception among Quebec leaders that they are getting a bum rap coming out of the Oka controversy and that the Oka experience is not very representative of the overall nature of relations between the Quebec government and its various native peoples.

Ms Gigantes: If we were to compare SAIC with our Intergovernmental Affairs, what would the number of comparison be, 85 to what?

Mr Bornstein: It would be 85 to about 45. It is about two to one.

Ms Gigantes: Has that grown rapidly recently, or is it this traditionally.

Mr Bornstein: SAIC is a big operation. It has traditionally been a big operation.

Ms Gigantes: Why is that? What do they find to do more intergovernmentally than we do?

Mr Bornstein: Daniel has more experience in the ministry than I do, so I will defer to him.

Mr Cayen: I guess that is an administrative type of question in the sense that there is a piece of legislation in Quebec establishing SAIC and the powers that it can exercise as a central agency vis-à-vis what they call line departments, as we do. The Ministry of Intergovernmental Affairs in Ontario is also governed by a piece of legislation, but its powers to co-ordinate the activities of line departments are not as developed as those of SAIC. In essence, the role of SAIC is much broader than that of this Ministry of Intergovernmental Affairs in Ontario. I would imagine that would create a lot more work for the SAIC department than there would be for the Ministry of Intergovernmental Affairs here in Ontario, so probably for purely a reason of legislative mandate there would be more work generated within SAIC than the Ministry of Intergovernmental Affairs.

Mr Bornstein: Let me give you an example. In Quebec, any government official wanting to make a trip outside the province technically speaking has to clear that trip with SAIC. It is a very centralized process for dealing outside of the province. In fact, if I have it right, you need a cabinet minute authorizing you to make that trip, even as a deputy minister, and authorizing you to say what you intend to say. We do not do that. There is no such centralization.

In addition, the co-operative programs between Ontario and Quebec, for example, that we run largely through line ministries tend to be run much more closely by SAIC.

Where we have one civil servant running the Ontario-Quebec Commission for Co-operation, they have three or four. We run these programs in co-operation with our line ministries. They tend to run them much more directly.

In addition, you have to remember the history of constitutional, shall I say, battles in this country. Since the Quiet Revolution, Quebec has seen itself as odd province out and has structured itself to try to restructure the relationship, so it created a strong ministry very early and it created offices throughout Canada much earlier than we did. They had an agenda in a way other provinces did not until recently. I think those two things, the structural one and the historical component, would help explain the difference in size.

Ms Gigantes: So in essence, when we enter into this kind of round of discussion, we are dealing with people who are practised in carrying out a very comprehensive program in terms of the directedness of their policies and the unified way in which they advance those policies.

Mr Bornstein: They are very impressive. I have been very impressed with all of the senior managers I have met in their ministry. But I must tell you that, as an outsider coming into our ministry, I find an equally impressive crew of skilled, experienced civil servants. We may be outnumbered, but we are not outsmarted.

Ms Gigantes: But in terms of the consistency of our approach along departmental or ministry lines and policy areas, I do not think there is any doubt that we have ad hoc'ed it through a great deal more than Quebec has.

Mr Bornstein: I am not sure I would want to comment on what is clearly a political matter.

Ms Gigantes: That was a philosophical, historical comment.

Mr Bornstein: Daniel, do you want to put your foot in this one?

1650

Mr Cayen: I will put my foot in this one to the degree only that as part of what Stephen was saying regarding the co-ordination of their participation in intergovernmental forums, given the post-Meech context whereby they have decided not to attend certain intergovernmental conferences and attend others, it was the only way they could find to control that, because even for Quebec line departments this consistency we are talking about is not so easily controlled.

The natural tendency in line departments in Quebec is to attend those conferences because so much information can be garnered on their respective areas of policy and programs. What they had to do to really present this consistency is police everybody to a degree that is called for, I would say, in the exceptional circumstances Quebec judged it found itself in after Meech, where it wanted to control its relationship with other governments centrally.

In fact, Quebec judged it was in an exceptional circumstance, so no minister or senior official or any official can meet with other officials or ministers and so on from other governments without clearing it through SAIC, and from time to time they may receive permission to participate in such forums, and through that process, created by what they consider to be exceptional circumstances, yes, they do

look as if they have more consistency and perhaps they do. Those circumstances may not exist for other provinces.

Ms Gigantes: The one other question I had was whether the Quebec Health minister has been lured to the current Health ministers' meeting by the fact that the Minister of National Health and Welfare is talking about new fiscal arrangements in health.

Mr Cayen: To my knowledge, no.

Mr Bornstein: No, he has not gone, not as far as I know. This is as of yesterday.

Ms Gigantes: It must have been very tempting.

Mr Bornstein: Yes. Apparently no one knows what is on the agenda.

Ms Gigantes: Yes. Everything is on the agenda.

Mr Bornstein: If I could just add one comment on this consistency question, those of us who spend our time watching Mr Bourassa know that while there may be consistency in long-term strategy, there is an enormous variation in, say, middle-term tactics. I am not sure SAIC feels it has an easy time maintaining a consistent line either.

Mr Offer: I have four short questions. The first deals with the referendum. The referendum is to take place by October 1992?

Mr Bornstein: It will take place in one of two short windows, in about a 10-day period in June or a 10-day period in October, and as I understand it, the reason they did not just fix a final deadline is that they do not want it held over the summer; that is, the sovereigntist force does not want the vote held over the summer when students are away from Quebec, their argument being a quite convincing demographic one, that the younger one is, the more likely one is to vote for sovereignty. They do not want the vote held over the summer when many of their supporters are gone.

Mr Offer: Thank you; that is quite helpful. The reason I asked is that if it is either June or October 1992, I would imagine that for a vote to be held at that time, there is a substantial workup prior to the vote. When one thinks about the time period, I do not know that it is absolutely proper, in terms of the realities of the matter, to think it is June or October. Probably the die will be cast much earlier, I would say two, maybe three or four months earlier, and once that is done, usually that will just carry on with a certain momentum of its own.

From your experience, do you think that if we get to that critical barrier when decisions have to be made in terms of the wording of a referendum and in terms of who is eligible to vote, it will be very difficult to be stalled or stopped, and that this might take place three or four months prior to the date?

Mr Bornstein: Quebec has a law on what it calls popular consultations which was put on the books prior to the 1980 referendum. It specifies everything you can imagine needing specification about how to hold a referendum: how long before the vote the question has to be formulated, who has to formulate the question, who has to pass it, who gets to campaign, how the campaigns are structured; it is all spelled out.

You are right that the runup is about three months, but in fact the runup will be much longer. There were people who were saying that they expected the debate on Bill 150 to be the kickoff for the referendum campaign. It looks as if that has not happened, perhaps because of Mr Bourassa's manoeuvre in taking the bill off the order paper for 10 hours and then putting it back on, perhaps not. But certainly once the federal proposals come out, once those committees start getting to work in Quebec in September or October, once they start hearing experts again and having submissions, to all intents and purposes I think the referendum debate will be on.

Mr Offer: I think we have to get a fairly clear idea from the committee's perspective what the real timetable is. When one takes into account the stated dates and when one also factors in the minimum runup, our timetable is much shorter than one would otherwise believe.

My second, third and fourth questions deal with the role of the committee that receives proposals. I almost used the word the "offers," but I will not. But I guess I did. In your opinion, is that primarily a receiver of proposals or a developer of proposals?

Mr Bornstein: There has been a lot of ambiguity about what exactly that committee could do. There is no sense, as far as I can tell, that the committee will produce its own offers. It will be reactive in the sense that it will look at what comes in, look at what is out there. Beyond that, its mandate looks as if it will be specified fairly vaguely, and statements at various points by Premier Bourassa and by Mr Rémillard seem to suggest that committee will be able to examine the various reports that have already been done, look at what other committees in the country are doing, perhaps even meet with other committees, although it has been sometimes yes, sometimes no, look at documents, invite in experts, talk about possibilities. Unless I have misunderstood the intention, they will not produce any proposals of their own, because the proposals are seen as already being there.

Mr Offer: Is it your opinion that this offers committee has an expectation that it will receive definite proposals or something more of a conceptual nature that is a beginning for discussion?

Mr Bornstein: I am really not privy to what is going on in their minds. I think they are looking at the Ottawa process, and what they think they are going to get in September and October is the beginning of something very broad and then gradually more concrete, detailed proposals to which one could say yes or no. They see Ottawa as having the lead in this process at the moment. What I think they expect from Ottawa is something they can look at and study and examine and ultimately say, "This will do," or, "This won't do."

1700

Mr Offer: I have a final question, and you actually touched on it with how the committee views itself. It views itself as one which primarily deals with the federal government. Where do the provinces roll into this? Is it that they see that the provinces' interests will be part of whatever

comes out of the federal document or do they see it coming in from the side?

Mr Bornstein: These committees do not exist yet. They do not even exist on paper yet because the bill has not been passed.

Mr Offer: Then I guess my question was a touch premature.

Mr Bornstein: It is one of those hypothetical questions that we are trained not to answer. The committee does not exist yet. Once it comes into being—and this is a hypothetical answer—I think it will take some time to figure out what they will and what they will not do. I think part of that will be the result of politics, who is on the committees, what their opinions are, what the balance of forces is, and then what the political leadership wants those committees to do. It is still very hard to know.

Mr Offer: I guess if one takes into account the time period they are going to be dealing with, if the earliest date for casting a vote on a referendum is June and the workup is three or four months, then just by taking a look at the calendar, this committee will have about three months to really do some of the hard work in terms of analysing proposals next October.

Mr Bornstein: If you assume they will stop working once the campaigns are launched, that may not be what actually happens. They may go on having hearings, trying to influence the outcome as the campaigns go on. That would be messy perhaps, but it may very well happen none the less.

Mr Winner: You may know Pierre Pettigrew.

Mr Bornstein: I know of him. I have not met him yet.

Mr Winner: Pierre Pettigrew appeared on a panel with Ian Scott last night at the Canadian Bar Association. They were discussing constitutional reform and Pierre Pettigrew advanced a rather interesting proposition. He said the Bélanger-Campeau commission was kind of a mini-constituent assembly, because you have politicians, non-politicians, women, aboriginals, multiculturalists. He opined that this was a good example of how constituent assemblies do not work, because he suggested that it was torn apart, that it did not come to any substantive conclusions. I just wondered how close this was in your opinion to a model for a constituent assembly.

Mr Bornstein: I am not sure it is my place to pronounce on what a constituent assembly would or would not look like. I think that is for the politicians and the political leadership to discuss. As for Bélanger-Campeau as a constituent assembly, it had representation from those groups. There were no aboriginals on Bélanger-Campeau. There were not very many women on Bélanger-Campeau. There were no members of the commission from a number of segments of Quebec society you might have thought ought to have been represented. This would only be a personal opinion at this point. It does not look like a constituent assembly to me, although it did do an interesting job of seeing what was out there in Quebec public and elite opinion at a certain moment in time, but perhaps also in generating a certain structure of political opinion as well. It was

not just a one-way process. So I think I will avoid pronouncing myself on what constituent assemblies ought to look like with that little comment on Bélanger-Campeau.

Ms Gigantes: I would like to come back again to the whole question of how provinces relate to this whole process. We are in a situation now where everybody is waiting for the federal government to bring forward certain proposals, and within provinces we have seen a multiplicity of committees and task forces and reports and so on, and we will see more. I find it difficult to see how all that comes together. I also find it difficult to know what role the federal government expects to play in bringing together committees like our committee with other committees. I do not know if you have a sense of that, whether there has been any suggestion from the federal government to the Quebec government about how it would relate to the committees, and your sense of how it is that committees, for example, in British Columbia or Alberta—or where none exists, in Newfoundland—how those people get informed about what is happening in Quebec. How do they get their information? How does Clyde Wells know what is happening in Quebec?

Mr Bornstein: I think I should restrict myself to the Quebec side, for starters, because it is what I know best. My feeling is there is an expectation that there will be some consultation between the Quebec committee on offers and some aspect of Ottawa's rather complicated process, but I am not really sure. I am not privy to any inside information on that. That will unfold as the negotiations go on.

As to how the other provinces get their information about Quebec, some of them—I was going to say some of them have offices in Quebec, but in fact they do not. We are the only province that has an office in Quebec, so that is not how they are doing it.

Ms Gigantes: Quebec has offices everywhere.

Mr Bornstein: Yes, Quebec has offices. In provinces where Quebec has offices, I would think those offices serve as conduits of information from the Quebec government to the intergovernmental officers and ministers in those provinces. Aside from that, I think they do what everyone does. They read the press. They read the documents. They send people to look. They think as hard as they can about what is going on. I do not think they have any secret agents, if that is what you mean.

Ms Gigantes: No, I am quite aware they do not. That is what puzzles me about how we are supposed to find out what each other is thinking, as it were, and pull those thoughts together in what is clearly a limited amount of time.

Mr Bornstein: There I would submit that Ontario is in a favoured position actually, having a long-established office in Quebec and a segment of its ministry that pays attention to Quebec and understands Quebec and knows the language and the history.

Ms Gigantes: If we only had to work out some kind of new arrangements between Quebec and Ontario, that would be fine.

Mr Bornstein: We do have, in addition, in MIA, segments of the apparatus that look at the other regions that have long experience in figuring out what goes on there.

We have an office in Ottawa where we can examine the process in Ottawa and also interact with the offices of other provinces.

Ms Gigantes: I understand. The thing is Ontario is not going to solve the question of what happens with Confederation by itself.

Mr Bornstein: By itself, certainly not.

Ms Gigantes: I accept your view that we have a good deal of information in this province and a fair amount of experience in this province, and that the relation is there over a long period of time, but that is not going to be enough.

Mr Bornstein: It is also true, though, that without Ontario no successful deal is, I think, imaginable. Ontario will play, I think, a significant role in this.

Ms Gigantes: No one would suggest the opposite, I am sure.

1710

The Chair: Just picking up on that last exchange, you may be aware, Mr Bornstein, that we as a committee, as part of the work we will do over the summer and into the early fall, are looking at the possibility of travelling to various provinces or having members of the committee travel to various provinces to meet with our counterparts where they exist, to see basically what the thinking is there in addition to sharing information. Mr Offer pursued this before in terms of the committee that was being set up there and there seemed to be a more positive attitude on their part than we were hearing earlier about the possibility of their being prepared to meet with us. Do you have any observations or advice to offer us in terms of the role we have been charged with, particularly with respect to our approach to Quebec?

Mr Bornstein: Again I am not sure it is my place, as a civil servant, to advise a parliamentary committee on what it should or should not do. I would not presume to do that. As to what that Quebec committee will or will not do, as I said to Mr Offer, it is still up in the air. The outcome will depend to a considerable extent, I think, on the internal dynamics of that committee and on the desires and strategies of Mr Bourassa and Mr Rémillard, so it really is very difficult to say now. If you said to me, "If we propose a trip to Quebec, will they let us across the border?" I do not know. I think we would have to wait to look at the composition of the committee, its exact mandate and then talk to it; that is, you would have to talk to it as a counterpart committee. As I understand it, relationships at the level of parliamentarians are good and getting better, are they not?

The Chair: Yes. In fact, I think members of the committee are aware of the new association that has been established on the initiative of the two speakers, between our Legislative Assembly and the National Assembly in Quebec.

Mrs Y. O'Neill: I just wondered, after Ms Gigantes spoke about how people learn about what is going on, can you tell us a little bit about what happened when we released our report? Did anyone in Quebec read it? Did it receive any press? We spent a lot of time on that report. We thought we were as careful as we possibly could be,

and as constructive as we possibly could be, of course knowing that it would be kind of the basis of our following work.

Mr Bornstein: It was read. I know that SAIC paid very careful attention to it. They wanted advance copies. They wanted to be put in an embargo to look at them and get advance notice. They took it very seriously. I know that within SAIC, studies were done and analyses were done and it was compared to various other documents, both federal and provincial, and their own. I know Premier Bourassa got a copy. He sent me a thank you note for his copy. His officials have read it.

This was right at the beginning of my mandate. I took over this position about the moment the discussion paper was released, so it is a little confused in my mind.

Mrs Y. O'Neill: I am talking about the report, as well as the discussion paper. I do not know which you are describing now.

Mr Bornstein: The preliminary report? I am talking about the discussion paper. The preliminary report was looked at and got the kind of play in Quebec that most stories from outside Quebec get: one round in the papers, one comment on TV on the CBC and Radio Canada newscasts, and then it faded out of sight. This is fairly typical of anything that is not a scandal.

Mrs Y. O'Neill: I guess what I am trying to get at is do you think it was studied by academics, economists, youths, students? Do you think anybody did take it and use it as a resource to know where we were at in our thinking here?

Mr Bornstein: I know we had lots of demands to get it. I have not seen any follow-up; that does not mean it is not happening, but I cannot testify to firsthand knowledge of what is being done with it. It is true that Quebec is very much focused on its own agenda, its own documents and on Ottawa. Aside from the pros, aside from the SAIC people and the experts, what happens in the other provinces is for the moment secondary, at least in terms of what happens at the legislative level. That is my feeling for how they are proceeding at the moment, very much focused on their own committees, their own reports, their own internal processes.

Mrs Y. O'Neill: I hope the committee of offers, or the offers committee, will read it. Can you say a little bit more about those who will be dissenting on the bill? There is one Liberal member, I understand. Is that the total of Liberals—

Mr Bornstein: There is one Liberal member who has said from the beginning—he is an anglophone member from the west island of Montreal. He was on Bélanger-Campeau and signed the report, but with an addendum of reservation of his own. From the moment Bill 150 was introduced, he took a couple of days and then he decided he could not support it. Everyone else in the Liberal caucus, as far as I can see from public information, will be voting in favour. The Parti québécois will be voting against; barring last-minute, behind-the-scenes negotiations and compromises, they will be voting against. The Equality Party will be voting against because the bill says "referendum on sovereignty." So the lineup will look like that and there will be an overwhelming majority, given the structure of the parties in the National Assembly, in favour of that bill.

It will become law, I would think, tomorrow or—today is Wednesday—Friday, but probably tomorrow.

Ms Gigantes: If we maybe want to attract the eye of Quebecers, we should invite the committee to come and meet in Ottawa.

Mr Bornstein: I am not sure; I have a vague recollection of seeing that their mandate would not include travel outside Quebec, but I could be wrong. I will have to check that, but something in the back of my mind suggests to me that I read somewhere they could travel anywhere they wanted, but not outside Quebec.

Ms Gigantes: If we held our deliberations in Ottawa it might attract their attention.

Mr Bornstein: Ottawa is in Ontario, after all.

The Chair: This comes from a member from Ottawa, Mr Bornstein, looking at another member from Ottawa.

Mrs Y. O'Neill: I did tell this Chair. I do not think the whole committee knows. I do not know whether, Evelyn, you have been able to say you can come on 28 June. The members from Ottawa are hosting, through the Deputy Speaker, the MNAs from the Outaouais in Ottawa. I have not examined the agenda closely, but it will be the first and springs out of the initiatives of the two Speakers.

Ms Gigantes: At the Chateau Laurier.

Mr Bornstein: I have also heard rumours of a softball game between parliamentarians from the two provinces, but they are only rumours at this point.

The Chair: They are only rumours. That apparently is being looked at, yes.

Mr Bornstein: I offered to umpire but was told it was not my place.

Mrs Y. O'Neill: The pitcher is the Chairman.

The Chair: No, not baseball. If people are interested in a good soccer game I would be more than happy to oblige.

Mr Winner: Will the winners be the winners or will the winners be the losers?

Mr Bornstein: I asked that question, actually, and they said it was never an issue when they played with other constituencies. They played two games and they always arranged for each team to win once.

The Chair: Well done. Thank you very much, Mr Bornstein.

Mr Bornstein: A pleasure.

The Chair: I know that for you to be here today you had to make some changes in your schedule, and on behalf of the committee we appreciate your being with us.

Members of the committee, that really concludes our public business. We do have some other items in terms of organization that we can carry on with in private session to continue getting ready for our summer sessions. I think Mr Bornstein will be around for a little while, as well, if we want to continue some of the discussion informally. A motion to go in camera would probably be appropriate.

Mr Malkowski: I will make that motion.

The Chair: Mr Malkowski. All those in favour? Opposed?

Motion agreed to.

The committee continued in camera at 1720.

CONTENTS

Wednesday 19 June 1991

Ministry of Intergovernmental Affairs	C-1157
Continued in camera	C-1167

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

Chair: Silipo, Tony (Dovercourt NDP)
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Gigantes, Evelyn (Ottawa Centre NDP)
Harnick, Charles (Willowdale PC)
Harrington, Margaret H. (Niagara Falls NDP)
Malkowski, Gary (York East NDP)
Mathysen, Irene (Ms)(Middlesex NDP)
Offer, Steven (Mississauga North L)
O'Neill, Yvonne (Ottawa-Rideau L)
Winner, David (London South NDP)

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Ontario Native Affairs Secretariat

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Première session, 35^e législature

Journal des débats (Hansard)

Le lundi 29 juillet 1991

Comité spécial sur le rôle de
l'Ontario au sein de
la Confédération

Direction générale des affaires
autochtones de l'Ontario



Chair: Tony Silipo
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Table of Contents

Table of Contents for proceedings reported in this issue appears at the back, together with a list of committee members and other members taking part.

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Table des matières

La table des matières des séances rapportées dans ce numéro se trouve à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et des autres députés ayant participé.

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

Monday 29 July 1991

The committee met at 1412 in room 151.

The Chair: If I can call the meeting to order, welcome, members of the committee, to the resumption of the meetings of the select committee on Ontario in Confederation. I would also like to welcome the people who may be following us over the parliamentary network and mention that in resuming our hearings we begin today on a series of discussions, which will take us over the next four weeks, with various experts as well as people from various constituencies and interest groups, the purpose being for us to pick up where we left off in our interim report and to delve into some of those issues in some detail.

We have tried to set up discussions in a way that we hope will be useful to us as a committee, and obviously also to the general public, and which will help us to work towards shaping a final report, which as members know we are now aiming to develop towards the end of November.

As part of that work, which we will be able to get into some more discussion on at a later time, in addition to our hearings and some travel that we will be doing to other parts of the country to speak to other members of similar committees that exist in other provinces, there will also be the convening of a conference which we have scheduled for the month of October. As I say, we will be developing and putting out some more details on that as the planning continues.

I think it is important to note that today and tomorrow particularly, and in part on Wednesday as well, we will be dealing with issues affecting native people. We are happy to have two presenters with us this afternoon, beginning with Mark Krasnick from the Ontario Native Affairs Secretariat, whom I would call to come forward. We will be spending some time with Mr Krasnick, and later on this afternoon we will be having before the committee the Chiefs of Ontario.

Before asking Mr Krasnick to make his presentation, I would just note for the members of the committee that there are a couple of memos from our research staff, one giving us an update on constitutional reviews in terms of an update on some of the work that has been going on across the country, and second, a memo dealing more specifically with the issue of native self-government, I believe. That is provided there, "Recent Developments in Aboriginal Land and Self-government Issues." That is for the members' information and use.

ONTARIO NATIVE AFFAIRS SECRETARIAT

The Chair: Without further ado, Mr Krasnick, welcome to the committee.

Mr Krasnick: I would like to begin by thanking the committee for the opportunity to appear before you today. I have put together some thoughts which I hope will give you a bit of a context and will address the specific question

of a constitutional amendment that will recognize the inherent right to self-government. As you undertake public hearings and public consultations, I thought it might be useful if I could share some of the questions that should be addressed at this stage if we are to see a constitutional amendment on the inherent right to self-government incorporated into a new national document.

I want to talk about two things: First of all some context and then the specific issues before you.

In terms of context, I thought what I would do is try to draw some parallels between the exercise we are going through today and the exercise Canada went through in 1867 and show how the discussion of self-government for indigenous people is very much a parallel and a reflection of the types of questions that had to be addressed 124 years ago.

We were all taught that in 1867 Canada became a nation and was by definition self-governing, but if you look at the question of self-government from the perspective of a student of federalism, the self-government exercise by Canada and by the provinces at that time was very different from what we exercise today. From the national perspective, there was a continued presence of British troops throughout the colonies. There was control of foreign policy by Great Britain. There was the appointment of a Governor General being a prerogative of the cabinet in Westminster. All court cases had to be sent to England for final adjudication, and of course any constitutional amendment of consequence required British concurrence and acquiescence.

For Ontario as a province at that time, the type of self-government that existed, from a bare reading of the Constitution, included a power which Ottawa could then exercise to disallow our legislation and to reserve bills for consideration by the federal cabinet.

Most important, if you think back, the power over peace, order and good government was to the framers of our Constitution a capacity for Ottawa to step in when it deemed appropriate and legislate for the good of the entire Canadian population.

Finally, the Senate was to provide a regional but not a provincial input into federal decision-making.

It was not until the appearance of Robert Borden in London during the First World War, the Statute of Westminster and the participation of Mackenzie King in the war cabinets of the Second World War, the ending of the appeals to the Privy Council in 1949 and the patriation of the Constitution in the 1980s that we could say that self-government was complete for Canada as a nation.

It was not until the early 20th century, when 50 years of court cases had passed and political relationships in Canada had changed, that we could say the provincial governments were no longer subordinate to federal disallowance

or override powers. It was quite clear that by the 1930s the federal government was no longer politically able to sustain reserving provincial legislation. By that time the courts had made it very plain there were real limitations on the power of the federal government over peace, order and good government.

It is in this evolutionary context that self-government, and thus indigenous self-government, fits.

1420

Today, by assigning responsibility for Indians and lands reserved for Indians to the federal government, the formal Constitution of Canada provides a plenary power to Ottawa equivalent to peace, order and good government. The Indian Act, by allowing the federal Minister of Indian Affairs and Northern Development to approve or disapprove band bylaws, provides the equivalent of the old power to disapprove provincial laws, but the political reality has become that over the last 20 years neither the federal nor the provincial governments can sustain the organizational structures or the political legitimacy to make the types of decisions with respect to indigenous peoples that they were expected and prepared to make in the past. It is for this reason that an amendment respecting the inherent right to self-government is a part of Canadian nation-building today.

With that context, I want to turn to the issues I think are important for this committee to ask about and consider as it continues on with its public hearings and consultations.

The first issue I think the committee has to address—and at this point I can only talk in this part of the text about questions, because it really is too early to find conclusions—is, is it possible to spell out areas of jurisdiction that indigenous communities would exercise in the future?

I begin with the premise that it would be advisable to include in the Constitution a clear statement recognizing the roots of self-government which have led to the consideration of the entrenchment of the inherent right, but in expanding on that principle and in writing a constitutional provision itself, we are left with the technical task of deciding what basic approach to take.

In my mind, there are really three potential approaches. The first approach is a provision which would look very much like the peace, order and good government clause in section 91 of the current Constitution. This clause calls for a general capacity on the part of the federal government to make laws and exercise jurisdiction. In other words, the Constitution writers can provide a provision that an aboriginal community—I think we will talk about its definition in a moment—can make laws for the peace, order and good government of its members on its land.

The second approach would be to list the specific areas of jurisdiction which would be the subject matter of indigenous government, and that is equivalent to section 92 of the Constitution, which is the power provinces use to find their jurisdiction, where we put in place an enumerated list or a number of headings which then becomes the granted power that provinces can exercise.

The third approach would be what is called the rights-based approach, and this would see the inherent right to self-government as a further articulation or a further spelling

out of the aboriginal and treaty rights that are presently found and protected by section 35 of the Constitution. In this approach, we add to the words "aboriginal and treaty rights" words such as "including the inherent right to self-government" and then we leave it to the courts to determine the breadth of that specific right.

Each of these approaches has its benefits and its costs. If one chooses the rights-based approach, however, one must consider the following: Does the analysis of the Supreme Court of Canada in the Sparrow case limit the inherent right to self-government? Let me talk for a moment about the Sparrow case, hopefully without become too technical, and I apologize if I am too technical. It is a problem with both being a bureaucrat and an advocate.

The Sparrow case is a case where the courts were asked to determine the constitutionality of federal fisheries regulations. These regulations were being challenged by an aboriginal fisherman fishing for food on the Fraser River in British Columbia. The court held that while the fisherman had an aboriginal right to fish for food, it was still possible for the federal government, in this case, to limit that right based on a need to protect the fish stock, eg, a conservation justification. At that time as well the Sparrow case stated that the right was a communal right which could be exercised by the aboriginal community.

In the previous discussions on self-government with respect to the inherent right to self-government of indigenous people, in the period between 1983 and 1987 the meaning of section 35 had not been determined by the courts. It was just an undefined provision. Now the courts have begun the process of spelling out a framework in which section 35 should be viewed.

Thus, if we were to include the inherent right to self-government in section 35 as part of the aboriginal and treaty right, the question we have to ask is whether this right is limited by a capacity of either the federal government or the federal and provincial governments to make laws which, if they can justify the reasons for the laws, would allow for the limitation of the inherent right to self-government.

This is important for two reasons. First, it is very similar to the American right to self-government. The American right to self-government provides that tribes in the United States are self-governing, but that their powers to make laws can be overridden by an act of Congress, and thus for any purpose that Congress may wish, it may limit the capacity of tribes in the United States to make laws. So the question becomes, is section 35 not only a place where the right to self-government can be articulated, but does it also now provide the capacity in governments to limit that right based only on a need to justify it for specific purposes? That is the first question.

The second question is, in looking at section 35 in the context of the Sparrow case, the reasons that Sparrow said were legitimate public policy purposes in the context of hunting and fishing were purposes such as conservation or public safety. If we were talking about the inherent right to self-government, we would not just be talking about hunting and fishing; we would be talking about the full range of powers that a government could exercise. Therefore the public policy purposes that may be acceptable to the courts

would either have to be spelled out in advance or might be much broader than public safety and conservation. Therefore what you would see is essentially the need for a whole round of litigation before clarity was provided as to what powers could be exercised by indigenous communities and what powers governments had to limit those rights.

In discussions around the inherent right to self-government, I think it is clear that the context of the 1983 to 1987 constitutional discussions has changed because of court interpretation. I am not sure, just parenthetically, how much time the committee has spent on the 1983 to 1987 process. I take it you have some briefing material that will spell it out, but in the last round of constitutional discussions one of the provisions that was incorporated in the Constitution was a requirement on governments to negotiate with indigenous people a range of items of concern to indigenous people.

For four years between 1983 and 1987 there was an attempt to negotiate a self-government clause. This was not successful and one of the questions that will have to be addressed is, is it possible to find a process for negotiating such a clause in the future that has more chance of success than the process we have been through in the past? So question number one is how do you incorporate sort of a general provision to self-government into the Constitution as it may emerge?

The second question I thought I would like to talk about is what communities would be capable of exercising the inherent right to self-government. Would the communities be based on historical ties and relationships, for example, the Mohawk peoples, the Hodenosaunee or the Iroquois confederacy or the Ojibway people, or would they be based on relationships established by treaty, relationships between the crown and aboriginal people, which would include the people of Treaty 9 or northern Ontario, now called Nishnawbe-Aski Nation, or the people of Treaty 3 in northwestern Ontario, or would the people who could exercise the power to be self-governing be established by some other test?

That leaves open the very real question about whether a specific first nations community or a reserve, as defined by the federal Indian Act, would have the authority based on the constitutional amendment to exercise the right, and further whether a group of aboriginal people could in the future argue that their aboriginality itself was sufficient to allow for the exercise of this right. If that were the case, that would mean that the inherent right to self-government was not just based on the existence of a land base—a concept we will come to in a second—but would also be available to groups of people who may live in urban settings as well.

1430

A third question is with respect to the land base. It must be understood, I think, that what these constitutional negotiations want to do is establish, recognize and implement a new relationship with the indigenous people of Canada. This new relationship will be based on the historical fact that there were organized indigenous communities when first settlement from Europe occurred. It should be based on that view of our Canadian history.

A new relationship has the capacity to establish an agenda for reform, and one of the elements in this agenda for reform must be resolving the question of the land base. It will be important to indigenous people to show that this issue will be resolved. Whether through a specific constitutional provision or through a commitment to negotiate, there must be a realization that aboriginal peoples and aboriginal communities need an appropriate and sufficient land base to develop and grow, to ensure that harvesting rights can be exercised, and to ensure that they have sufficient territory to utilize and exploit natural resources.

How to do this in practical terms, both with respect to writing a provision and with respect to carrying out the provision, will be the subject of considerable discussion over the next year. Whether the results of these discussions lead to a constitutionalized amendment under self-government or through a rethinking of the power of governments to make treaties is also something that should be considered.

The final question to address is that of financial resources. An indigenous community needs financial resources to exercise self-government. The Constitution of Canada already makes provision for general recognition of equalization payments between the regions of Canada. As a principle, it should be possible to draft a provision that provides an adequate and secure resource base to aboriginal communities to be truly self-governing, to make choices between conflicting priorities.

Governments of indigenous peoples should not be dependent on annualized or discretionary funding as their only source of revenues. There should be some capacity for the whole range of intergovernmental fiscal arrangements to be available to indigenous communities. It may also be possible to look at some of the direct grants to individuals as being capable of being funnelled through indigenous communities as well.

In closing, I have tried to talk briefly about the inherent right to self-government, to talk about land, and to talk about financing in the context of the Constitution of Canada and constitutional amendment. I would be pleased to answer any questions you may have, both with respect to this item and with respect to current negotiations on specific self-government agreements and land claims.

The Chair: Thank you very much, Mr Krasnick, for that useful overview. Are there questions from members of the committee?

Mrs Y. O'Neill: You are able to be very concise even though you are a bureaucrat. It is kind of fun. I returned from two weeks in the Maritimes and I was very surprised to see how far along they are in guaranteeing seats to the aboriginals both in New Brunswick and in Nova Scotia. One seat, I think, is their original goal. I am wondering what your response to that is, how much discretion there is in Ontario among the communities and among the bands, because I do not know of much discussion here at Queen's Park about the issue. As I say, the breadth of the discussion in the two maritime provinces that I mentioned surprised me.

Mr Krasnick: I am trying to remember the briefs we have seen over the last couple of years. There has been considerable interest in guaranteed seats on boards, commissions

and agencies. I think that is where the priority has been for the most part in the indigenous leadership in Ontario. There was one submission that called for, I think it was, seats in the Legislature, and I think there has been a brief from the Union of Ontario Indians in the past which has asked about that. It has not been a matter of priority because most of the interest has been in the constitutional inherent right to self-government, and that has been the priority of the first nations and other organizations to date.

Mrs Y. O'Neill: Do you see those two concepts as contradictory then?

Mr Krasnick: Not at all. I think the only place I know of where you have aboriginal seats is in the New Zealand Parliament, where a number of seats are reserved for that purpose. It is a way of incorporating the aspirations of, for the most part, people who do not live on reserve into Parliament as well, so I do not see them as being contradictory.

There is one proposal that has been advanced, and that is for an indigenous 11th province. In that sense, there would be seats in the new Senate, whatever that would look like, and there would be the whole range of provincial powers that would be exercised. But again, the bulk of the thought and discussion over the last decade has been around the inherent right to self-government. As it looks like issues of new institutions become clarified and as you start talking about what role the Senate may take, this may become a much more real possibility. It just has not been one yet.

I think the reason for that is that up until now the discussions around constitutional recognition of the inherent right to self-government have been parallel to the general constitutional discussions. At this point, there is a beginning of some sort of merging, and therefore new issues which were never talked about in the past are to become real issues for purposes of discussion.

Mrs Y. O'Neill: Thank you for bringing me up to date.

Mr Harnick: One of the difficulties that I think we, as a committee, are going to have is to determine who speaks for the native communities in this province. If we are going to try, in some sort of report form at the end of our committee deliberations, to set out certain guidelines that we think this province should follow in development of native self-government, whom do we have to speak to to try to get a consensus among native groups? How wide is the divergence of opinion among your three jurisdictional categories?

Mr Krasnick: I would think that if you go back to the 1983-87 process, speaking for groups across Canada you had the Assembly of First Nations, you had the Native Council of Canada, which was for the most part off-reserve and non-status people, you had the national Metis organization and you had the Inuit people. Those were the four people who have historically been recognized as having a view on these matters. The Assembly of First Nations has, as part of its process over the next number of months, decided to have four constituent assemblies, which will incorporate the views of urban people, the views of aboriginal women, the views of youth as well, and elders. I think those were the four. I think that added to the first four groups I talked

about nationally, there will have to be the sense that the aboriginal women's community has been consulted.

In Ontario specifically, we are in the middle of an evolution; there is no doubt about it. It is clear that the Chiefs of Ontario are the primary spokespersons for the on-reserve first nations and are beginning the process of encompassing within their mandate urban status Indians.

The question of the Metis population is, I think for most groups, the responsibility of the Ontario Metis and Aboriginal Association. The question of off-reserve, both status and non-status people, is being discussed between various groups and there is still some controversy over it. I do not think there is any easy answer to that. I think you will have to listen to them all and then make your own judgement down the road.

1440

Mr Harnick: In your experience up to now, is there any kind of consensus emerging in the work that you have been doing?

Mr Krasnick: As to what the provisions should look like?

Mr Harnick: Yes.

Mr Krasnick: Other than the need for a constitutionalized provision which recognizes the inherent right to self-government, I think we are still at the start of the process. A number of the groups, as well as ourselves, through the auspices of this committee, want to do some thinking about that over the winter. It is just too early to say that a consensus emerges over which route to take or which approach to take. I would think the inclusion in section 35 of the recognition of the need for a land base for aboriginal people who do not have a land base would be part of that consensus, but how that will be reflected in a constitutional provision—it is just too early.

Mr Harnick: One of the concerns I certainly would have is that if you look at your rights-based approach, if that was the direction you took, so much of the development of native self-government would be left to the courts. Could you maybe tell us what the feeling, in your opinion, is about courts developing the system or style of native self-government, as opposed to dealing with it in one of the enumerated powers approaches or even the peace, order and good government approach you have set out?

Mr Krasnick: My own view would be that a constitution as it deals with the relationship between governments is essentially a political document and that the courts should try to take a narrow view in interpreting it. In other words, the activist role of the courts, as many people, I guess, have written, has really begun in the modern era with the charter, which is really the relationship between individuals and the state. My own sense would be that with respect to relationships between governments, we should try to come up with a provision that leaves as little to the courts as possible. With respect to any relationship between individuals and communities, then clearly there is a role for the court.

Having said that, one of the concerns of the aboriginal leadership over the last decade has been, if it is just left to political determination, what is the incentive for government

to get on with it and actually do the negotiating? That is where there has been a desire for a capacity of the courts, if negotiations fail, to impose some sort of settlement.

Under some sort of even rights-based approach, the originality we will all have to bring to bear on this process is how to provide sufficient flexibility and yet provide some capacity for closure, so that it is not just an open-ended clause that governments can let slide over the decades if they desire. That is the balancing act required by the history of the last decade.

Mr Bisson: I listened quite intently to the three recommendations that were made. Can you go back and take a look at those, because sitting there, looking at them and thinking about them while you were spelling them out, I see some inherent problems with some of them, and some positive things. Could you just go through them very briefly and talk a little bit about what you would see as some of the difficulties, especially the ones about inclusion in the Charter of Rights. Basically you were saying that you wanted to recognize self-government within the Constitution, allow it to evolve. Could you talk a little bit about some of the difficulties with that?

Mr Krasnick: I say as a precondition that there will be a set of words we can find that will recognize inherent right to self-government. Then the question becomes, how do you give more clarity to that provision in terms of the Constitution?

The clearest way, if it can be arrived at, is really spelling out, "These are the powers that will be exercised by indigenous governments." So clarity is the positive. The negative that goes with that is the fact that it is static, that there has to be some capacity for powers to change. Just like in the country, powers change over time. All sorts of things we would never conceive of as being within the ambit of self-government in the 1990s may be very realistic in the year 2010 and vice versa.

That is question number one and that was my second option when I said enumerating or listing the actual jurisdiction.

The first option, which is the equivalent of a peace, order and good government clause, is really very much like the American Constitution. It says that appropriate communities can make laws, period. Then it leaves to the general rules of the Constitution what happens if there is a conflict between laws made by an indigenous community, for example, and the laws made by either a province or the federal government.

The negative is that there would still have to be considerable negotiation over how we decide in a specific case, say the provincial Education Act and an aboriginal Education Act, which one has primacy. The other negative, or the positive, is that it is very open-ended.

The third provision, which is the inclusion in section 35 of the Constitution, has the positive aspect of being the closest to what the indigenous communities have been asking for. It bases it on a rights approach and says these were rights aboriginal people have because of their history.

The issue, and in my mind it has both positive and negative aspects, is really the question of court interpretation

that Mr Harnick was just raising. You have that specific question about what role you want the courts to play in making determinations both as to what the provisions should be, but also with respect, I think—and this will probably be the real question—to the speed at which issues are negotiated. I think you are going to see that if it is left to another round of discussions, then there is going to be pressure for a time limit of some sort and then for something to happen at the time that occurs. So those would be a general articulation of the pros and cons.

Mr Bisson: Just to comment very briefly, the third point you made I think is quite interesting.

Mr Winner: Mr Krasnick, you have been the deputy minister for native affairs for some time now and I guess you might sense better than anyone that there are many different notions of what self-government might mean. To some it may involve establishing separate structures and institutions of government that would parallel our federal-provincial-municipal levels of government, but to others it simply means more involvement in the process, and the models might be the agreement with the Nishnawbe-Aski nation or the Temagami Advisory Council where our first nations are more involved in the decisions that will impact on their environment and their livelihood.

I am just wondering whether you see any consensus emerging among the first nations as to what the model might be for self-government once it is enshrined in the Constitution.

Mr Krasnick: I think you are right to say there are a number of different definitions of "self-government." We are looking at the capacity for communities to enhance their capacity to make decisions. That is what we are talking about. Therefore it seems to me that depending on the location of the community and the history of the community, either an exercise of power on its own or an exercise of power as part of a broader regional decision-making, like the stewardship council in the Temagami area, may be perfectly appropriate. I think there is no consensus, given that each model of self-government will be rooted in its history and rooted in its location.

In terms of the exercise of powers to provide services to members, it is very clear that the first preference would be for local exercise of legislative jurisdiction and for administration together. At the same time, communities realize there are economies that can be made by grouping together, either regionally or through tribal councils or larger organizations, to provide services and specialized services which in some instances can be very costly.

In my mind the preference would be for maximum authority directly over specific territory and over specific powers or jurisdiction, but that in the context of other users of resources, say, or in the context of providing higher or post-secondary education, involvement in other local boards would be perfectly acceptable to communities.

1450

Mr Winner: Can the inherent right to self-government be extended to the same rights that foreign nations might exercise vis-à-vis Canada? There seems to be one school that believes you can be a separate, self-governing

nation within Canada, and another school that regards first nations as outside of Canada and dealing just as if they were foreign nations with the government of Canada.

Mr Krasnick: In light of the discussions I have been involved with, the consensus seems to be that we are looking at nations within the context of the Canadian nation state. So it is not foreign nations, but nations within the country. In the discussions around the statement of political relationship which this government has just finished negotiating, that was one of the items that had to be considered. The Assembly of First Nations has also made it clear that it is looking at a constitutional amendment, and in so doing it is looking in the context of a single nation.

If you go back to the patriation debates in the early 1980s the question was, was the federal government itself sovereign? We got through this whole debate of whether provinces could be sovereign. In the Canadian context, what a sovereign nation is, even, or whether provinces exercise limited sovereignty over their areas of responsibility and the federal government exercises limited sovereignty over its area, is something which is only a decade old.

It seems to me that we are clearly looking at it within the context of a single country, but the words we use, whether it is sovereignty or nation state, also have to be seen in the context of the country and may very well be quite reflective of the fact that in the federal state no one exercises true, final plenary power.

Ms Gigantes: When we talk about native people in Ontario, could you refresh us about the numbers. I think your phrase was "aboriginal people without a land base."

Mr Krasnick: There is no census—let's start with the negative—of aboriginal people without a land base. The best work we have been able to find is that there are between 170,000 and 200,000 aboriginal people in the province, and of those about 60,000 live in reserve communities. So that leaves you about 140,000 who are either status Indians living in urban centres, Metis people or descendants of aboriginal Metis people. That is the best, but there is a wide range of questions.

There are some communities throughout Ontario where there have been sort of offshoots of reserves. Groups of people have left reserves and moved into communities over the last 100 years, of which the number of communities would probably be in the dozens, where they would like some sort of recognition of their aboriginality. That is another way of coming at it. They just do not have clear numbers, and we have been trying to see whether it would be possible to do some sort of census some time. The question is not asked.

Ms Gigantes: This complicates the whole question of how we relate political rights to a land base.

Mr Krasnick: It does, because the rights of aboriginal people are both with respect to land but also with respect to their own aboriginality, and many of them have left the reserve and moved to other parts of the province or the country. Those people still have rights. If they have rights, there may be some aspects of their lives about which they have a valid argument to be self-governing. In terms of children's aid societies, we have looked at children's aid

societies which could recognize a specific group of people other than the general children's aid society, and that may be the type of parallelism we have to look at with respect to aboriginal people as well.

The other, I guess, analogy is that—and this is different in the last couple of years—first nations are now starting to take responsibility for their membership, even when they do not live on the reserve, and therefore the question we have to face is the question of sort of extraterritoriality, sort of a governance whose basic nucleus is the reserve, which wants to extend jurisdiction over people who live in the city with respect to some aspects of their lives, especially child welfare.

Ms Gigantes: This whole question is one that I think probably is not well understood by Ontarians who are not of aboriginal origin. It certainly has not been by me, for example. I do not think I am unusual in this. When we talk about self-government, I think my tendency has always been to think of aboriginals who are on reserves and saying that group of people has a right to self-government. But it is much more complex than that and we are trying to figure out how those rights could be exercised by large numbers of people who might have a claim to the rights but who are not associated with reserves at all.

Mr Krasnick: I think that as a country, just to understand self-government in the context of reserves, we still have a long way to go. There is not much understanding about concepts like self-government, but you are right, there is another nuance which is quite fundamental, which is that you have small, dispersed populations within larger urban centres, and that has just not been debated.

It seems to me as well that you may very well find that any right to self-government or exercise of self-government very much reflects locality, so you are going to have a very different set of rules for an urban setting than you would have for a reserve community. I think that is really why in practical terms, when you are talking about implementing the right to self-government, you are going to have to have a process of negotiation where you can start relating the circumstance of the population you are dealing with to the exercise of self-government itself. That is where there is always going to be some negotiation process or some way of clarifying what the actual meaning is of the right as it starts to be exercised.

Ms Gigantes: Was there any in-depth discussion of this particular question, if I could phrase it, the question of aboriginal people without a land base, in the discussions that went on between 1983 and 1987?

Mr Krasnick: My sense is—and I would have to get back to you on the specifics; I am not exactly sure—that really the question was, first, for first nations communities and then, second, for finding a land base for the peoples across Canada. There are a number of regions where there just are not land bases; the Metis community in Alberta, for example. That was sort of the second priority. So while it was discussed, I think the main context of it was not this context but a broader context of the reserve and finding land, if I can put it that way.

1500

Mrs Y. O'Neill: I have a couple of questions, one after listening to all of this and knowing and having just done a review of what the status is of all of these things that are going on in Ontario. Do you have a feel within yourself—and you do relate on a daily basis to the issue—that there is a positive thrust now within the bands with what has gone on, whether it be economic development, whether it be the work with the children's aid, whether it be the attempts at doing something about the judgement on the Sparrow case? What do you feel is the actual mood at the moment, generally speaking, as we go into what I think you have stated, and I think it is true, is a very deep-thought kind of process?

Mr Krasnick: I think that is a very profound question and it is a very hard one, because I think the last year, beginning with the Sparrow case, with the shootings at Akwesasne and Oka, has been a time of some considerable upheaval in aboriginal communities, in the way governments react to aboriginal communities.

My sense is there is a belief that there may be something to this in terms of trying to start it again, in trying to work towards a constitutional amendment, but there is still a lot of—I do not know if the word is scepticism or a lot of waiting to see proof out in the communities. I think that, as I was trying to say, to build a new relationship is something which we are starting. When I say "starting," it has been happening over a number of years, but it is a decade type of exercise and it will be accomplished in small steps.

I think that openly talking about these types of issues is viewed positively. I think being prepared to address the fact that the historic basis of aboriginal people pre-dates the discovery by Europeans is considered a positive step. Being prepared to say that the inherent right exists is perceived as that, but in terms of the other side of the equation you talked about, which is economic development, seeing real change on the ground, seeing an improvement in the quality of life of aboriginal communities in the way that suicide rates start to drop, people feeling that they have control over their own environments, I think there is still a very real wait-and-see attitude there and all one can do is keep working at it.

Mrs Y. O'Neill: One of the things I have noticed, again with surprise, particularly in the last two or three months in the non-native communities and in the press, is there is a recognition of the deep spirituality of aboriginals and talking that this is a great asset that they have as they enter into this process. It seems to me that leadership on both sides is absolutely crucial at this point and certainly I think most of us understand that.

You said something that surprised me when you were answering Mr Winninger, and I certainly would like a little more about it. You said each model of self-government will relate directly to its history and location. That is very hard for me as a politician and as a non-aboriginal person to understand, and I do not even know how we could deal with that, if that is what you are saying, each model of self-government. Obviously, Mr Winninger opened by saying there are various interpretations of this, so inherent

self-government, from what you are saying, has many meanings.

Mr Krasnick: That is right. At the level of implementing models of self-government, if I can draw some analogies, you have the Iroquois confederacy or the Hodenosaunee, who are in southern Ontario for the most part and are potentially looking at models of self-government that would incorporate elected representatives and hereditary types of representatives in terms of their government decision-making process. They are also located in areas where there is use of a wide range of public services: high schools, hospitals, etc. They are sort of integrated in that sense into the service delivery network of the province and the adjoining communities.

You have other areas, in some of the northern parts of the province, where there has been very little contact with provincial delivery systems. Delivery systems have been for the most part federal, where their historic relationship is based on their relationship between adjoining communities and with the treaty they negotiated. In that sense their model of self-government, both in terms of their locale and in terms of how they interact with Canadians and with Ontarians, will look very different.

In a sense, however, if I can draw an analogy, the way provinces deal with issues may look very different, even though each province exercises the same range of powers, so in that sense you can have a general provision which says we exercise all these powers, but when you are in Nova Scotia, as you said, it looks very different than it would look when you are in Ontario, because of our history and because of where we are located and our traditions. That does not mean that we are looking at 140 provisions for Ontario or 140 different types of models, but it means that in those negotiations we have to start from the perspective that history and locale do make a significant difference.

Mrs Y. O'Neill: You said there is a lot of scepticism about such things as social services and economic development. Do you think a stronger commitment on the part of a provincial government—and I guess I am talking about the funding that you mentioned as part of your original presentation—would help these negotiations that are of a more nebulous nature? Would the companion step-by-step strong funding commitment to those kinds of things—and there have been certainly some initiatives, I personally do not think enough, on behalf of the present government or the government that my party was taking leadership in—be a very significant component to success here?

Mr Krasnick: I think the most important component to success at this point in time is affirming the inherent right to self-government. It really is on what you call the more philosophical question. Clearly improvements in funding for service delivery are important and will be seen positively, but the basic issue that I think will embrace the relationship over the next at least a year and maybe a couple of years is around the concept of government. That is where the priority will have to focus and that is where I think the sense of a new relationship will become real.

The communities know their history. They know that many of them require all sorts of changes within their own

community, but this is, I think, the time in which they feel that dealing with the question of their relationship with other Canadians is real and therefore I think that is where the priority will end up being.

The Chair: Thank you very much, Mr Krasnick, for giving us a very useful overview.

Mr Krasnick: You are welcome.

The Chair: To members of the committee, our next group is due at 4 o'clock, so I think that given the time, we can recess at this point.

The committee recessed at 1507.

1615

CHIEFS OF ONTARIO

The Chair: I call the committee meeting to order. I welcome people back. We are happy to have with us Mr Gord Peters, grand chief, from the Chiefs of Ontario to speak to us this afternoon. Welcome, Mr Peters. It is nice to have you with us. We will let you make whatever opening comments or statements you want and then there will be a short number of questions from members of the committee.

Mr Peters: Thank you for the opportunity to be present and to be able to express our views on constitutional change.

I guess we are trying to express a number of our concerns and views about the way things are proceeding because of the kind of support that has been there for justice to be done, not only for the aboriginal people in this country but in terms of all the ways in which Canada is struggling to be able to meet its own requirements of dealing with its own people in terms of a people's relationship.

I think we have acknowledged many times that with the issues we have, our aboriginal treaty rights issues, we are not trying primarily to have those as the centre of our focus, even though we come to many of these forums. The basic thrust of our discussions is always how we see the aboriginal people of this country fitting into the process, what kind of recommendations we are going to make in terms of how we want to deal with other governments as a relationship, what has been the downfall in the past and what we see as the shining star for the future.

I guess one of the things we have been trying to make clear across this country for a number of years is that we too have a vested interest in how Canada develops as a nation. We have a vested interest in seeing what happens with Quebec, the positions that we take in regard to Quebec and unity in terms of how everybody binds together in Canada.

We have an interest in what happens in terms of the amending formula, because ultimately that is going to decide how we as a people are able to deal with the Constitution on an overall basis and a continuing basis.

Yes, we have particular items that we, as the aboriginal people, want to deal with in regard to the Constitution as well.

We have always said that we wanted to further entrench the inherent right to self-government in the Constitution of Canada. We have had this debate among ourselves, among our people, several times. The question we constantly ask ourselves is, if we are talking about the inherent right and the fact that our source of jurisdiction flows from our

occupation of the land and it flows from the creator, how do we entrench that into someone else's Constitution, into another government's Constitution?

It is something we have had to answer repeatedly. We are saying that we are not getting our source of power from the Constitution Act, but rather that the Constitution is simply recognizing that we have those powers and that they do exist. That is the recognition process we are talking about.

We are also talking about how we will implement it. So the major thrust we have had in our constitutional discussions is that, number one, we want the explicit recognition which governments across this country have said were implicit in section 35. We want that to be explicit and we want the implementation process to follow.

That is something we have embarked upon in Ontario, the implementation process. The Ontario government has now recognized section 35 and that our rights are in section 35, including our inherent right to govern ourselves. Now we are embarking on a process of trying to understand how we exercise those jurisdictions that are exclusive to the first nations and where we deal with areas of overlap in jurisdiction and how we relate to each other on an administrative basis.

A lot of the comments I have for today kind of exclude or are premature in a sense that we are having our leadership in Ontario come together in the first part of August. We are doing the formal signing of the statement of political relationships on 6 August and we are having three days of discussion among ourselves on exactly where those things go and what are the expectations we have as a people in being able to implement the kind of items that we have before us.

The reality is that the statement of political relationships is a constitutional document, whether or not people recognize it. It is the basis of our work on the Constitution and it is the basis of the implementation process that we must go through as the first nations in Ontario. You cannot separate the statement of political relationships and you cannot separate the inherent right of self-government from the constitutional process. They are all combined together; they are all part and parcel of the kind of advancement that we need as a people to be able to effectively replace our jurisdictions that have been assumed and that have been occupied by other governments in Ontario.

1620

In this process we talk about constitutional responsibility and, yes, primarily our relationship is with the federal government of Canada. I say the "federal government of Canada" when I really mean the government of Canada, the crown in right of Canada, because our relationship is not only with the government of the day that is there, whether it be the Conservative government this term and the Liberal government the next term or the NDP the following term; our relationship is with the crown in right of Canada, which means that we have an existing relationship and there is a responsibility of the government as a whole to deal with our rights, because as we move through this process, as we deal with the rights and responsibilities that we exercise, there are also duties on the part of the state that must be acknowledged and dealt with as we move ahead.

So eventually, I guess, we see ourselves as being responsible for ourselves, but in the remainder, there is a relationship that exists between ourselves and the government of Canada. That relationship is already established under section 35 of the Constitution. It is an acknowledgement of an old relationship that existed hundreds of years before in the treaty-making process, and that has not changed. Those are still there, and the royal proclamation is appended to the Constitution Act of Canada. It outlines that treaty-making process, which very clearly identified the relationship that we have in this country.

We talk about the effect of provision of services to aboriginal people, and it is something that we see happening on a regular basis. We have seen that as a process that has, over a number of conferences, broken down our discussions on fiscal relationships. When we have talked about this, we have acknowledged that, yes, the provincial government does have some obligations in this process, because in a division of powers it is exercising the use of our lands at this particular time, and the use of our resources. They are also, in Ontario, the signatories of one of the appendices of one of the treaties, Grand Council Treaty 9, in northern Ontario. So the provincial government does have obligation, but our primary obligation rests with the federal government.

In terms of services, as we move into the areas of being able to deal with our own jurisdictions, what we are talking about is a fiscal arrangement, so that the services are not being provided under the auspices of federal legislation and provincial legislation and provincial policy and federal policy, but rather are being delivered through our own institutions, mandated by our own governments, dealing with our own citizens within our own jurisdiction.

We also say that if extensive changes are made to the divisions between federal and provincial powers, we issue a caution to the governments, one that we have issued time and time again. As we have indicated numerous times, there is a relationship that now exists and if we are to alter that relationship, surely the first nations should have a say in whether that relationship gets altered or not.

We will go as far as saying that, having a say in those issues, the track record that has been there for the number of years that we have been involved has not given us the kind of protection we need, and if there are going to be extensive changes required in this country, we again come to the table and require that a consent is needed before alterations are made about the responsibilities that we currently have with the government and the crown in right of Canada through the treaty-making process.

We come back to another issue that we have debated a number of times about the founding nations of this country. One of the fundamental characteristics in this country that we say is not described is that we talk about aboriginal title. There needs to be a recognition of our title in this country, and there is no recognition of our title. Not even within Ontario do we have a recognition that we are owners and occupants of our own lands. That has to happen.

We have to understand that when we start talking about those very fundamental things like title, from that point there cannot be three founding nations in this country. We have to understand that what we are talking about is a

relationship. Different countries and different peoples came to our territories and they asked our permission to be on this land and they signed treaties with us signifying a relationship to be on this land and they established their governments. That description has to be done. The founding documents of this land have to be enshrined; those treaties have to acknowledge that this existing relationship has never been altered in this country.

Whether that can be done in the Canada clause remains to be seen. If it details those kinds of discussions that I have spoken of, then perhaps we can find it in the Canada clause, and perhaps it needs to be done in the preamble with the Canada clause. But certainly the Canada clause is something that came out of the woodwork when we were trying to find a way to deal with the Meech Lake accord, in its potential at that particular time to be stopped in Manitoba. But I think we need to pay some attention to the Canada clause to talk about the distinct relationship that we have and how that gets implemented within the Constitution.

We talk about sections 35 and 31 again. That is the initial question being asked about how we entrench self-government in the Constitution. Yes, they should be altered and they should reflect those powers in those jurisdictions that are exclusive to first nations that are going to be dealt with.

We talk about guaranteed representation in the House of Commons and the Senate, and at this particular point in time we have said to the Lortie commission that no, that is not something we are prepared to deal with, because of the unfinished business in this country. Guaranteed seats in the House of Commons, in the Senate and legislatures or any other proposal at this particular time only means to us that we have the opportunity to be able to be outvoted and to be able to be outdistanced in a race in any kind of discussion that goes on in this country about issues that impact the aboriginal people.

We have said before that we need to have some way to protect ourselves in this process and we have asked for a consent. Governments have told us that it is a veto and a veto is not acceptable, that no government in this country can have a veto. When we talk about our relationship and our being subsumed under the power of the Parliament of Canada, it becomes very clear to us that without that consent process, we will not put our relationship on the line in this country in a place where we would have maybe 10 or 12 guaranteed votes in a country that has 290 seats in the Parliament.

We have had many people come to us and try to convince us otherwise, that it would not prejudice aboriginal treaty rights, but again the track record that we have to live with every day indicates to us that it is not sufficient protection, somebody's word is not sufficient protection. We would require those kinds of certain protections for ourselves, such as the consent clause, in order for us to be able to deal in any way with the House of Commons or the Senate in a majority government.

The other questions that we talk about are in terms of the development that is being pursued in the Yukon and the Northwest Territories. The only thing we have said in the past is that we need to have that forum dealing with

boundaries and the creation of provinces left open so that in fact if there are wishes by the people in the Northwest Territories and the Yukon to be able to establish some kind of province, they have the capacity and the ability to do so. It should not hinge upon the new amending formula, but it should rest with the process of old that anybody who wanted to join Confederation simply submitted to the government of Canada and began negotiations on how to enter Confederation; not by using the formulas that have been established since 1982 but by using the process that was there prior to that of how provinces entered Confederation. If those were the wishes of the people of the Yukon and the Northwest Territories, I think they should be accorded that process. But I cannot speak for those people in the north, in the Yukon and the Northwest Territories. That is only some of the discussions we have had with them in the past.

1630

On the question about our aboriginal languages being recognized in the Constitution and which languages would receive such recognition, I think one of the things we have said in the past is that we have found it difficult to deal with our culture and our languages because of the limited definition that was given to them in the constitutional days. Our definition of culture, if it had been entrenched in the Constitution of Canada before, meant that we were talking about the explicit recognition of the inherent forms of our government, because the two are interwoven and they are inseparable. At that point the governments kind of pulled back the offer they had to deal with language and culture in the Constitution of Canada because it was very clear that our traditional forms of government entailed all of those items of our culture and our languages.

To us, there needs to be the protection of our languages and in some cases we would even look to some of the wordings that were put in the Meech Lake accord as a way for the government of Canada to be able to promote and enhance the kinds of things that we have on the table in terms of our cultural richness as well. We have said in the past that we need that ability for the government of Canada to be able to preserve those things that we have, and also to protect them. Whether they are our languages or whatever aspects they are that are endangered, we need those to be protected.

We see those things happening in some of the areas, but at the same time we become very leery of those kinds of descriptions, such things as a Cemeteries Act, the archaeological acts that are moving ahead right now, the heritage act, all of those things that are moving right now and have moved in the past. We need to be able to clarify very clearly how they are going to impact on our people, because in the past they have impacted negatively on our traditions and our cultures and we need guarantees that, if those things cannot, we need to be able to proceed with things under our own jurisdiction and under a working relationship with the government of Ontario and federally, areas where we can come to agreement jointly on things that would provide the kind of protection we need in those particular areas, language being one of them.

I guess on the last question about how representatives of aboriginal people in territorial governments can be en-

sured a meaningful role in the process of constitutional reform, we have taken the first steps ourselves to be able to do that. The provincial government can also do that very clearly by ensuring that if we move ahead—not if but when we move ahead in implementing this statement of political relationships we have, that signifies we are talking on a government-to-government basis and there is an equality proposition to and that we are equals going to the table. That needs to be put forward by this government now in Ontario, and by future governments, that what we are talking about is equality, that we are talking about equals going to the table and moving ahead with those issues in a constitutional process, and constitutional reform has to reflect that equality.

As well, we have made that same presentation at the federal level to Mr Clark, who has been given the responsibility of dealing with the unity of Canada. In the first part of our discussions he was not very positive in terms of us moving ahead, but I think the understanding he had of why it was essential for us to move in the direction we are moving has had some kind of impact on him. In our discussions in Morley, Alberta, a couple of weeks ago, we have come to an agreement that we will be moving ahead with a parallel process nationally to deal with our specific items on constitutional reform.

The basic premise we are using is that we speak for ourselves and that we represent ourselves, and by virtue of that, we could not have the federal government speak to our issues for us in the constitutional process. Based on that same kind of premise, nor can the provincial government speak for us or represent us in the constitutional process. So we have to think about the offer made to us about the constituent assemblies in Ontario. If we are moving on a government-to-government relationship and we are talking about equality, then it becomes very difficult for us to be entwined in a constituent assembly in Ontario.

Those are some of the ways we see that we are able to promote a meaningful role in terms of the first nations of this country: the equality provisions that we need to deal with the government-to-government relationships and the equality provisions that we need in terms of our relationship on a nation-to-nation basis nationally respecting the treaty-making process that has been there.

I have gone over a number of the questions you have raised in particular to aboriginal people. As I said before, the process we see ourselves involved with does not only permit us to be relegated to dealing with those aboriginal issues, but in terms of the integrity of a process for Ontario and an integrity for a process nationally, as governments we see the same thing, that the integrity of our people in the process we are dealing with has to also include those elements of the relationships we have. We must come forward with views based on all of the items that are going before this country in terms of the reforms that are necessary. We will be doing that in the upcoming months. We will be trying to deal with the issues that everyone grapples with. As well, issues that have been created for us we will deal with.

We are trying to find ways to have input now from our youth. We are trying to find ways to have input from our elders. We are trying to find input from the women of our

nation and we are trying to get the input from our urban people as well, so that we are complete in the representation of our nations, so that we have not left out or excluded any of our own people in bringing together those things that we need, not only to strengthen our nation but to be able to strengthen the Canadian nation as a whole, so that we can understand the relationships that we have so that there can be certainty out there in terms of dealing with the lands and the resources and the people as a whole and our relationship is not based simply on economic union but it is based on people having a direct relationship.

Those are the opening remarks that I have. What I would like to engage in today is question and answer, because I think we need very much to engage in discussions about how we see things unfolding in the few short months we have to deal with the constitutional process.

The Chair: Thank you very much, Mr Peters. There are a couple of questions and undoubtedly there will be others. I think I speak for the committee in first of all thanking you for coming forward, but also in saying that, as you indicated, the Chiefs of Ontario will be engaged in a series of discussions and meetings and we would be delighted, as you see appropriate, to be informed of any developments in positions that come forward. We would obviously be very happy to receive any additional information from you.

Let me start with Mr Miclash at this point.

Mr Miclash: I too would like to thank you for your presentation and a lot of very interesting points that you have brought up. Chief Peters, you well know that in my area I have a good number of reserves that I travel to, and I have been sort of involved with the youth on a number of those reserves. You indicated that you will be wanting to hear from your youth. What I would like to ask you today is, what have you heard from them so far in terms of what they want for their future, especially throughout the north?

1640

Mr Peters: I think one of the big things we have heard from our youth is that they are telling us we had better do something, and do it fast, because the times are changing. While we are at the table talking, there is much happening in the territories of our people. The timber is continuing to be cut, the mineral resources are continuing to be extracted, the fish are continuing to be taken, all of those things are continuing to be done. They are saying to us that if we do not get on with the discussions and we do not find results and bring results very soon, there is not going to be much left in the way of resources for us to control when we do find the control.

They are also telling us very clearly that they have alternative methods of making things happen, and I think that is a message we have given to this government before. We said very clearly to the Liberal government previously that we had to have changes that reflected the aspirations of our people, because there is a different element among our people now that we have to deal with. The young are becoming much stronger in their own ways. They are becoming more educated, they are understanding the system much more clearly, and they are also much more impatient

than the previous leaders we have had. That is the message we are getting from our youth, and it is clear to us that it is a very strong message.

I guess the other message we are getting from our youth is that there is confusion in our ranks. On one hand we are advocating very strongly that, yes, we can look after ourselves and we can deal with ourselves, and on the other hand we are still having to deal with programs and services in order to be able to generate a livelihood for our people. That confusion is reflected in our youth, who are moving in particular areas, and I think when they see the confusion, a lot of times the strong ones are telling us the message I said to you earlier. The weaker ones are saying, "What's ahead for us?" They look back and they see nothing and they look forward and they see nothing. So what is there? What can there possibly be but this confusion?

What we have resulting from that is a large number of our people now taking their own lives because there is nothing they are able to see as a direct consequence in the future. It is very alarming to us, and the trend at one point was that we were dealing with males only as the majority. Now we are talking about females as well becoming a major part of that group of people who are living in that confusion. That is why we need to move quickly and that is why the youth are telling us we have to end this confusion, and yes, we have to have certainty in our communities about where we are going as a people.

Mr Miclash: You were talking about their involvement in future discussions. What is planned for them to get involved?

Mr Peters: At this particular point in time we have two things we are trying to do. Number one, we are trying to encourage our communities to get back into the areas of youth, especially in the areas of recreation, so that we can provide those additional forums for people to be able to exercise that leadership potential.

Second, what is very explicit in the short term that we are trying to do is our own constituent assemblies, and we are trying to solicit the opinion of our youth through the colleges and universities and the high schools by dealing with our own assemblies. I know the timing is short and we have committed ourselves to quite a task in front of us, but the commitment is there from our people and I think we will be able to do those kinds of things we are talking about.

Mr Harnick: Would a parallel process be something that should be looked at on a provincial basis, as well as the initiative that is now taking place on the federal basis?

Mr Peters: I think it will merit some discussion as to how we proceed. I think the door was left open the last time we met with the Premier. It was a proposal that he put on the table for three items to go ahead as part of the national agenda. It was also part of a proposal that he raised, the constituent assembly and how the aboriginal people in Ontario would be involved. I think at this particular point in time it is an internal discussion that we are having, and I very strongly believe that we will come back in the early part of August after our meeting and we will have some recommendations on how we will proceed. In all likelihood it will be very much like a parallel process,

but it will certainly have to express clearly the equality of our governments in this process.

Mr Winninger: Earlier today a speaker mentioned that what self-government means can be largely tied to location and history, so that what self-government means to one native community means something entirely different to another. You have said today that the constitutional framework Canada has can often be constraining, and it does not encompass notions like language and culture. It is very difficult to fit your interpretation of language and culture into the constitutional framework that we have.

I am just wondering, given that you represent many first nations in Ontario and you have to somehow reconcile those differing notions of self-government—and obviously a number of them believe that you can have self-government but within the Canadian constitutional framework, because that is enshrined in the statement of political relationship—surely it is going to be no easy task to define in the Constitution what self-government will mean in a manner that will satisfy all of the first nations in Ontario, let alone across Canada. Could you comment on that?

Mr Peters: I guess there are differences; that is very clear. There are differences in terms of the traditional governments that our people have. But the one thing that is not different for our people is that we are all talking about the same thing. We are talking about exercising our own jurisdiction. That comes from our source and that does not come from legislation or from the Constitution of Canada. What we are looking for is a framework that will allow people to address their particular governments as they see fit. But what we are talking about is that overall question of the jurisdictional component having to be there.

At this particular point in time, even within the Canadian constitutional framework, some of us would say that process is already there, that within section 35 you have already acknowledged the existing aboriginal treaty rights of the aboriginal peoples. In the past the governments have said that is a limitation, that the existing legislation meant that if you did not exercise those rights prior to 1982 they did not exist any more, and that if they were regulated, they could be regulated out of existence. But we know that is not true any longer. We have known it to be true all along that we had those powers and that those powers could not be extinguished. Recently, in the Sparrow case, the Supreme Court of Canada said those rights could not be regulated out of existence; they could not be extinguished because of regulation.

We continue now to deal with that constitutional framework in understanding that provincial legislation simply frustrated the exercise of that right; that provincial governments had no authority and no jurisdiction to be able to make laws over Indian people; that we are trying to unfold and to remove those jurisdictions where they exist now. We are trying to acknowledge, also within the Canadian constitutional framework in a larger and a broader context, the recognition of the existence of those things we have.

As you break it down, if it is the Ojibway nation, they are still fighting for that same jurisdiction. Even though their governments may be different, they are still talking

about the same thing, about exercising that jurisdiction. The laws that they make will be based on their traditions and their way of life. Their laws may be different than those of the Cree or those of other nations in this country, but the framework will encompass that, and it will be still within the framework that they will be able to do the work that is necessary for them to have that negotiation process of how they implement their jurisdiction.

That is what we are trying to get across when we talk about the framework aspect. We are not trying to specifically entrench one way of being able to deal with the area of self-government. We are trying instead to provide the framework, and the approach that individual nations take will be respected within that framework so that as they negotiate they are negotiating the implementation of their jurisdiction.

1650

Mr Winninger: Would it be fair to say then that one first nation may be satisfied with participating in existing non-native institutions of government whereas another may choose to set up its own parallel structures and institutions of government, that the process may be different for each nation? Is that what I am hearing?

Mr Peters: I hope you are not. What I am trying to get across is that in terms of the Lortie commission, the electoral boundaries and financing commission that is going on, what we are trying to say right now from Ontario's perspective and what a number of our organizations and communities have said is that they do not see themselves being involved in another government's institutions and they do not see themselves exercising the jurisdiction of another institution.

What they are saying is that we want to have our own institutions, and whether they are political institutions, economic institutions, whatever kind of institutions they are, those institutions will exercise their own jurisdiction. Those people within those institutions will then interface with what exists in terms of the state of Canada or the provincial governments and the institutions that they have, and there will be administrative arrangements to understand how those things will work.

What we talk about is coexistence. I suppose the best way I can talk in terms of coexistence is that we have exclusive areas of jurisdiction that are our own and no one can make laws over another in those exclusive areas. Then there will be areas that we will share. We will have areas of co-jurisdiction. That is different than the idea of co-management. We need co-jurisdiction before we can talk about co-management of the resources that are out there, because that is one of the fundamental elements we have.

Those discussions are going on right now. If you look at the situation in Bear Island with the Mandamin stewardship council they are talking about, the concept of co-jurisdiction is going on right now here in Ontario. It is not new. It is not something we have to reinvent and come back to the table and say we wonder if this can work. We know where the snags are in the process right now in that implementation process and we know we can iron those things out and get past those areas. So those are the elements we are talking about.

I think in this country right now you have found that the discussions about people participating in other people's institutions and utilizing other people's institutions are there simply because there are no alternatives for them to deal with. What we are trying to do in Ontario now is to provide those alternatives so that you do not have to go back to the Indian Act and try to it to accommodate where we want to go, so that we do not have to go back into those same institutions like the federal Parliament to be able to have our voice heard.

Those are things we are saying that can be eliminated for us so that we operate under our own, totally under our own.

Mrs Y. O'Neill: I thank you, Chief Peters, for coming. I think we were supposed to meet earlier in the year, this committee and you, and that day you had to go off to Ottawa when we came to the cultural centre. You certainly have shown, in your attempt this afternoon to answer the questions we put to you, just how complex the issues are that you deal with and that we are trying to deal with with you. I appreciate the way in which you tried to answer those questions.

My first question is, do you think those were the right questions for us to ask? Are there things that are not attended to in these questions that you would like to say or that we should be looking at in reference to your people, things that we have somehow missed?

Mr Peters: The question that we deal with many times is, how do we actually implement self-government? The other question we are constantly asked is, what does self-government mean? To answer that first, I tried to answer in terms of Mr Winner's questions about our own jurisdiction, about our own institutions and all that. That is what we mean by self-government, having that control and being able to have a relationship with Canada and also with the province of Ontario.

How do we implement that? We were talking about that at one stage, saying there has to be constitutional reform to be able to do that. Second, there has to be legislative reform, not only federally but provincially as well. I will give you an example. In Ontario you have Bill 77 right now. Bill 77 empowers our people to deal with our own child welfare institutions. When we say legislative reform, at some point we are going to have to deal with that legislation so that for our institutions that deal with our children and the welfare of our children, the authority does not come from the provincial government but from our communities, our first nations, to be able to empower them. So legislative reform is going to be critical here within Ontario as a method of implementation.

Third, we are going to have to deal with policy questions. There are a number of policy areas we are going to have to deal with right off the bat, because a lot of the premises that our relationship exists on right now in the province of Ontario are based on policy. There is a self-government policy in Ontario that is very limited. That is either going to have to be scrapped and a new one started or else we are just going to have to ignore that in terms of our discussions as we go along. The policies on dealing with land are going to have to be dealt with. The policies

dealing with economics are going to have to be dealt with. All of those things are going to have to change so that they reflect the equality and the relationships that we have.

We are going to have to find new ways to deal with land. That is going to have to be dealt with, because as I said earlier in my presentation, there is no way for us to be able to own land in this country. There is no way for us to have and to hold aboriginal title even though it is talked about all the time. Our lands are held in trust by the crown. We need to be able to deal with the way we as aboriginal people own and occupy and control our own land and our own resources that are within those lands. That is something we are going to have to deal with.

The other thing that we are going to have to deal with in implementation is the real tough questions of third-party interest. Those things have hounded us from day one, ever since I have been part of any kind of process that has tried to deal with any implementation. That is where really tough, hard political questions are going to have to be dealt with.

When we start talking about implementation of our governments and our jurisdictions and our lands and our treaties, we are now talking about dealing with people who are already occupying those lands, about companies that are already cutting down forests and about mining resources. We are going to have to be able to say at some point in time, "Those are our resources." The switch has to come. The access to those resources is going to have to come from us, which means that 25-year forest management deals that are currently there, that cannot be evaluated every five years, should be evaluated. Where our people are ready to occupy and take over those lands and to regain control of their own lands, those things are going to have to happen. Fishing arrangements that are currently there with commercial fishermen are going to have to be revisited.

All of those things where third-party interests impact are going to have to be dealt with. Those are going to be very difficult questions for the government to deal with because they are tough questions for us to deal with as well. We are the ones who are saying, "We need you to make this decision," because we cannot survive right now in the state we are in. The federal government says to us, "We're prepared to talk to you about self-government," but it is in the confines of our reserves. We occupy one tenth of 1% of the land base in Ontario. How can anybody be expected to survive on that kind of land base? We need land.

First and foremost when I talk about a change in policy, the policy of compensation has to go, because our first premise that we deal with is that we need land and we cannot be giving away more land. The only thing the claims process in this country allows us to do is to continue to give away more land, and that has to stop. All of those things are part of the implementation.

1700

A lot of people out there agree with us that we should have the right to be able to govern ourselves, but those are the impacts people deal with. The tough decision to deal with the Algonquin people and their land areas that deal with Algonquin Park is part of that kind of long-term stand that successive governments are going to have to deal with. The reality is that in order for us to be able to have

the economic self-sufficiency we need to stand as first nations and as communities within those nations, we are definitely going to need more land and we are going to need access to those resources to become economically self-sufficient.

Mrs Y. O'Neill: I thank you for answering so completely.

I want to say to you I was very happy to begin to read about your first nations circle on the Constitution. You likely know better than I that elders, native women, some youth and not very many urban aboriginals came before our committee when we did the tour of the province. I think some of the most poignant, direct, sincere, meaningful presentations were made by native women and I really am very pleased. The elders were an inspiration to us.

I wanted to ask you, because you seem to be able to express yourself so well, if you could tell us a little bit about what you hope for in this next conference that you said is going to take place at the beginning of August. Would you please help me understand, is that a conference of chiefs?

Mr Peters: Yes, it is.

Mrs Y. O'Neill: So at that time you will not be having the component of the youth, the women, the elders. That is going to be the other section of the assemblies in the constituent assembly aspect, right?

Mr Peters: Actually, our first round of discussions is dealing with all those issues we have on the table. What we are doing is we are bringing in our leadership from all over Ontario. We are bringing in the organizations, the grand chiefs, the tribal council leaders, the district chief leaders, the independents. We are bringing in the native women and also the friendship centres for our urban people. We are beginning to strategize on how we are going to be able to move these issues forward that we have, so that our relationships are ones we understand, so that we do not find ourselves embroiled in difficulties in our own backyard as we are trying to move ahead. We are trying to re-establish the linkages we have as a people to each other. Those things were done to us as well in the process of the Indian Act, of our people having to deal with the urban settings where they have lost their right to participate politically in our communities, because the Indian Act did not allow for those kinds of situations to occur.

The result of a lot of those things that have occurred is the different organizations that have sprung up with the women and the friendship centres and other aboriginal organizations within the cities. It is something we are trying to deal with internally. It is something we did not deal with effectively during the 1980s, during the last constitutional conferences we had. It is a mistake that we learned from, that we have had to come back and we have had to address.

One of the things that is very critical for us that we are working on now is ensuring that we know how we are going to be represented. It is an issue that we continue to deal with with the governments, because of our disagreement in terms of representation with the Ontario Métis and Non-Status Indian Association and its representation. We are at the point right now where we know we can organize

ourselves and discipline ourselves to go past those barriers that are currently there with the federal government and we can adequately represent ourselves in this process. What we need to have is governments recognize the positions that we establish within ourselves. We need the governments, both federal and provincial, to be able to deal with some of the particular issues that we put forward in terms of representation.

But definitely the onus is on us to make sure our women and our urban citizens are represented. It is also very imperative that we get the voice of our youth actively involved, and that we begin to acknowledge and listen to the advice that is being provided to us constantly by the elders, something that has not had the kind of impact it should have had within our structures of the past, but certainly has had a tremendous impact, I would say, probably in the last three or four years as we have gone through a number of crises where the guidance of our elders, and particularly our spiritual elders, has been of the utmost primacy of resolving those issues in a peaceful way.

Mrs Y. O'Neill: A final question then. Will the statement of political relationship be part of your discussions?

Mr Peters: It will be the major part of our discussions because we are hopeful we will be able to show the rest of the country that dealing with the inherent right to self-government is not something that is going to dismember this country or break Canada down as a country, but rather enhance Canada in terms of the certainty. We will want to be able to show concrete examples of how the inherent right can be exercised in working relationships with existing governments for this constitutional process. So the statement of political relationships becomes a major item on our table about how we intend to show the rest of the country and especially the federal government that there is no real danger here; that if we work co-operatively and drop the adversarial approach we currently have, we can find solutions.

We are prepared to deal with solutions, and we have offered solutions many times to the current issues we have. The statement of relationships offers to us in many ways a beginning of how we are trying to effectively demonstrate to our own people and the people in Ontario and nationally that we can do these things we talk about.

Mrs Mathysen: I think in some ways you have addressed some of my concerns. Basically, I wondered about that process of drawing in urban native people, because many of them, it seems from the description of censuses, are urbanites. I wondered how successful you had been in drawing those people into the discussions because many of them have been cut off from native communities for one, two or even three generations. Are you happy with the kinds of results you have managed?

Mr Peters: I am happy that we are talking to each other and that we have passed some of the initial barriers we continue to generate among ourselves. We have had some very good discussions on how we see things happening in the future. Certainly organizations that have been there to represent our people off reserve are not going to suddenly disappear overnight because there are promises

by the leadership that those things will happen. I think what we see ourselves embarking on now is a process that will take us two or three years to be able to put things in perspective. It will also deal with the institutions of our own governments and how we mandate those institutions, because we are not and we have never been trying to establish areas of jurisdiction within the cities. That is something we have never tried to do. We have simply tried to establish institutions that would be able to meet the needs of our people who are living in the urban centres.

Those discussions have started and we are making some good progress, and we continue to ask for their input, invite them to our sessions, to our chiefs' conferences this past year, to our discussions on the statement of relationships in its implementation, and now in terms of the constitutional discussion that we will be embarking upon. I guess it is up to us to change our attitude as well to be able to drop those barriers. Hopefully within a short time we will be able to have those common elements bind us together and make us a stronger nation than we have been in the past.

1710

Mr Eves: Chief Peters, you mentioned different areas in your discussion with Mr Winninger about what self-government meant to you and to your people. You mentioned areas of exclusive jurisdiction and areas of co-jurisdiction. I wonder if you could outline to the committee some practical examples of what you would consider to be areas that your people should have exclusive jurisdiction over and areas you feel should be co-jurisdictions.

Mr Peters: Right now we are involved in a couple of processes as well that are internal to us. Number one, we are going through a mapping exercise. We are dealing with our traditional land, and we would like to be able to map all of our traditional lands for two reasons: (1) we know we will be in a negotiation process dealing with lands, and that is something at the top of our agenda—lands; (2) 1992 is right around the corner.

One of the things we have said before and we continue to say is that in fact we did occupy all these lands and we had traditional uses for all of its lands, much in the same way now that the government of Ontario has land management use plans for all of their lands. We have the same thing, and we had the same thing before you arrived. That is something we want to put back in place to be able to show people exactly what we have had.

So it will hinge on that as being the areas of exclusive jurisdiction. What we can negotiate in terms of those traditional lands, we know that we want more than being able to have the reserves as the exclusive areas of jurisdiction, what is talked about in terms of the federal government. As well, we want to talk about those lands that are adjacent to our communities and our traditional lands.

The best example I can give you is the Bear Island situation that you are probably aware of anyway in the sense that the community is there. It is a very small community. They talk about their traditional land as being about 4,000 square miles of land. They talk about how they are going to share those lands in areas of co-jurisdiction.

They envision what they have as their lands, of what they want exclusive jurisdiction on, going beyond the small community they have. The co-jurisdiction process starts with the stewardship council, which says the local communities will have 50% jurisdiction and the first nations will have 50% jurisdiction. They will talk about how they will use those resources in that particular area.

The particular area they are talking about now is the forestry aspect. They would like to make decisions based on how they see their local needs being met locally in terms of the first nations and locally in terms of the towns and the municipalities and areas that surround our first nations. I think we see the kind of work that is necessary to be able to do those kinds of things in our surrounding communities. We know we have to get involved in the kind of research that is necessary to show the kind of usages that are potentially able to take place without destroying the environment. We know the kind of research that has to take place in order for us to have sustainable development that will sustain us not only for the next 20 years or 25 years, but as long as our people will live there, and to be able to enjoy the same kind of luxuries in relationship to our natural environment that we currently have in some of those particular areas.

That is the kind of work that is necessary, and those are the kinds of ways that we see exclusive jurisdiction and shared jurisdiction being dealt with. I guess it is sometimes difficult to envision when we only talk about it, but when you actually see it happening, it becomes much easier to understand and to be able to see that it can be a reality. Many times we are challenged with these issues, and everyone says to us, "Those things can't happen; they won't happen that way." But when you actually see them in the beginning stages and you see people working at them and you see them working, then you know it is there and it will happen more and more in the future to each of our communities across the board.

Mr Eves: I just have one more, smaller, more specific question. One area of jurisdiction, if you will, that has always interested me is the justice system. I wonder what you feel the aboriginal or native people think or what is a role that they perceive they have to play with respect to the justice system.

Mr Peters: I can tell you what we think about in terms of taking care of our own people. I can tell you very little about how we plan to interface with federal and provincial law at this point in time. As I said to you a few moments ago, I did not understand a lot of things in terms of how they were actually going to be able to work until I had seen some of them work. That means there are two versions of what we are having to do right now, one dealing with our own traditional ways of being able to deal with justice, as a way of being able to deal with our own people overall. We did not have courts, we did not have crown attorneys, we did not have prosecuting attorneys and we did not have all those kinds of things.

Mr Eves: You do not know how lucky you were.

Mr Peters: Yet there was a system there that people were able to deal with it by accepting the responsibility of

the community of taking action in those particular areas, and those things still happen. I see them happen and I know they are possible, yet in the size of our communities, for our people to be able to move back into those things, there are some who do not exercise that way right now. But it is possible for us to be able to deal with, I would say, 99% of our own items in our community. Where we need the interface on some of those issues might be on the criminal aspects of some things at this particular point in time, but I think that even as we are moving along, we are talking about being able to handle all those areas of justice for ourselves.

The other one currently out there that is being dealt with is just the supplying of our own people to the existing kinds of institutions, and that is tribal courts, for example, that are there. It is the use of police constables and enforcement within our communities, the existing system that we know, that surrounds us. Many of our communities are saying, "We are going to have to be forced to use these right now, until we are able to bring back a value system in our community that forces our people to be responsible for what happens in our communities." We are hoping there will be a sunset clause on the use of those kinds of institutions so that we do not simply invoke the same kind of system into our people that we say does not work for us now as we have our relationship with the provincial justice system and the federal justice system.

I do not know how we are going to fully interrelate. It is something we are going to have to begin discussions on. We know we need a justice system. We know there are some things we cannot handle at this particular time, for instance, the use of your forensic capabilities. In dealing with those criminal acts, we do not have that kind of capacity and we know we are going to deal with them. The fact that we are going back and we are saying, "Yes, we'll use some of the institutions," we know that we will have to deal with some of the penal institutions you have in order to incarcerate people at this particular time. It is not our wish to continue to incarcerate people, but at this particular point in our history, it is something we are going to have to deal with and we are going to have to have administrative ties at that level as well.

How our police interact with each other is something that is being negotiated at this time, but the reality is that we will make our own laws in those areas of exclusive jurisdiction, we will enforce those laws and we will resolve those problems within our community. Our people will have to understand that yes, we will have appeal mechanisms in our community, but there will be no way they will be able to appeal to any outside government or agency to be able to resolve problems for them after a certain point in time. The decisions that will flow from any infractions of our laws will be strictly in our hands.

That is our plan at this point in time and that is what we are working for.

1720

Mr Harnick: Just very briefly, going back to the self-government aspect of this, you indicated earlier that constitutional reform must reflect equality, there must be

government-to-government relationships. Just following through with the justice aspect, if we have a system where there is recognition of a form of native self-government, how will we resolve, in your eyes, disputes between those governments?

For instance, if there is a land claim and there is a native self-government scheme in place, and perhaps the provincial government might be involved with a land claim, the native government is going to be involved with that land claim and the federal government is going to be involved with that land claim, and let's assume it cannot be solved. Negotiations break down. Where do we go among three governments to resolve our disputes? Have you given that any thought in terms of dispute resolution among what would be three levels of government?

Mr Peters: Only in a very preliminary way. We have had some discussions on trying to look at some ways of resolving disputes that only reflect at this point your legal system. We have no other vehicle at this time that would take into account our jurisdiction and our laws and your jurisdiction and your laws and how those things would be resolved if they were in conflict. Obviously it is something we are going to have to deal with.

I do not have an answer for you today, but I know very clearly that we have kicked it around and we have not been able to find anything in terms of any kind of tribunal or any other mechanism for being able to resolve those disputes. The only thing I can say is that we are hopeful that as we move along and we understand each other, we will be able to deal with some of those disputes so they do not become the kind of disputes we saw last summer and we do not have to resort to those kinds of actions to be able to resolve disputes among ourselves. That is the only thing I can say at this particular point in time.

Mr Harnick: My thoughts are really with that recent land claim decision in British Columbia, the difficulty being how you establish a court that is recognized by all of the levels of government that are involved, that has laws that reflect all of the communities involved and that has judges who are representative of everybody. I do not know if you can ever deal with that problem in a traditional way.

Mr Peters: I do not know either, but I know one thing right now: There is no aboriginal case law in this country. You do have court cases that reflect how Indian people are to be dealt with, but you do not have any of our laws that have ever been dealt with or have ever been put forward in terms of our own jurisdiction within our own systems in this country. I guess it is something we will live with for quite a long time in terms of this dispute resolution process, but hopefully the development that takes place will not provide those kind of head-on confrontations in the first decade or two while we are trying to resolve these kind of issues. Perhaps by that time we will have understood what it means when we talk about aboriginal law, and we may have given ourselves the opportunity to provide the vehicle to be able to deal with those kind of particular circumstances.

The Chair: Are there any other questions? Chief Peters, any other comments you would like to make?

Mr Peters: Only one comment that I have and, again, it is all related to this area of justice. I think one of the things we are trying to deal with throughout this whole process is to dispel a number of rumours and myths that have been allowed to continue over a number of years, and we talked about those here during this discussion. The myth that we gave up all of our land and all of our resources when we signed treaties is not true. We never gave up all of our lands and our resources. If you understand the philosophy and the strength of the ideology and the beliefs that our people have had and continue to have and the special relationship we have with land, you know it would be virtually impossible for our people to give up our lands.

On the other myth of parliamentary supremacy, we never gave anybody the right to make laws over our people. Those things have been assumed. The rule of law, of which we heard so much last summer, is also number one of those fallacies that continue to exist, because within the highest law that you have, you have already acknowledged the existence of the aboriginal treaty rights, yet rule of law excludes those. So that is something we have a great deal of difficulty with, the propaganda that is continued by government on the federal level in dealing with our people.

There are a number of those elements that we say have to be dealt with and they have to be looked at in a way that reflects the kind of positions we have come to understand in the last few months in Ontario. We are hopeful that we can dispel some of those myths with a good communications

strategy. We are hoping that we will be able to deal with those with the anglers and the fishermen and with the developers and all the other people who have direct vested interest in Ontario and that we can help show them there are things that have been here hundreds and hundreds of years that are still intact and that are still valid today and that have never been relinquished or in any way superseded by any federal or provincial law or any Parliament or Legislature in this country, and that justice can be achieved.

With that, Mr Chairman, I thank you again for the opportunity to express our views and for sharing in being able to respond to the questions that are being asked.

The Chair: Thank you for being here, Chief Peters. I think you know there is a lot of sympathy within this room, but also certainly that we heard right across the province. For us the challenge is to try to turn those sentiments into some real, concrete action, and I think our continuing discussions will hopefully help in that respect.

I again conclude by inviting you, as I did earlier—following your meetings in August, if you feel there is some additional information that you want to share with us at that point, please feel free to do so. Thank you for being here.

Mr Peters: Thank you. We will.

The Chair: With that, members of the committee, we are recessed until 2 o'clock tomorrow afternoon.

The committee adjourned at 1727.

CONTENTS

Monday 29 July 1991

Ontario Native Affairs Secretariat C-1169
Chiefs of Ontario C-1176
Adjournment C-1185

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

- Chair:** Silipo, Tony (Dovercourt NDP)
Vice-Chair: Bisson, Gilles (Cochrane South NDP)
Curling, Alvin (Scarborough North L)
Eves, Ernie L. (Parry Sound PC)
Gigantes, Evelyn (Ottawa Centre NDP)
Harnick, Charles (Willowdale PC)
Harrington, Margaret H. (Niagara Falls NDP)
Malkowski, Gary (York East NDP)
Mathysen, Irene (Middlesex NDP)
Offer, Steven (Mississauga North L)
O'Neill, Yvonne (Ottawa-Rideau L)
Winninger, David (London South NDP)

- Substitutions:**
Frankford, Robert (Scarborough East NDP) for Mr Malkowski
Miclash, Frank (Kenora L) for Mr Offer
Wessenger, Paul (Simcoe Centre NDP) for Ms Harrington

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C-26 1991

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Table of Contents

Table of Contents for proceedings reported in this issue appears at the back, together with a list of committee members and other members taking part.

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Table des matières

La table des matières des séances rapportées dans ce numéro se trouve à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et des autres députés ayant participé.

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au (416) 325-7400.

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

Tuesday 30 July 1991

The committee met at 1410 in room 151.

GRAND COUNCIL TREATY 3

The Vice-Chair: Welcome back, everybody, to this second day and this second part of our hearings at the select committee on Ontario in Confederation. For those people tuning in, the work of the committee at this point is to hear submissions on the part of various people answering specific questions on the points that were raised in the first part of our hearings.

We would like to call as our first witnesses Grand Council Treaty 3: Steve Fobister, grand chief; Brian Perrault, tribal chief; Kelvin Chicago, tribal chief.

Mr Fobister: Good afternoon, ladies and gentlemen, members of the select committee on Ontario in Confederation. My name is Grand Chief Steve Fobister. I am the grand chief of Grand Council Treaty 3. On my left is Tribal Chief Brian Perrault, who represents the Fort Frances area tribal council. On my right is Kelvin Chicago, who is also a chief of Lac des Mille Lacs First Nations, representing the Dryden area tribal chiefs.

I welcome this opportunity to make a presentation on behalf of Grand Council Treaty 3, but I do so with a heavy heart because of the shooting of the OPP officer and the wounding of two other OPP officers in my home community of Grassy Narrows First Nation this past Thursday.

In thinking about this presentation and in mourning the death of Sergeant Cooper, I also had a great deal of pain for the suffering of the community of Grassy Narrows first nations, because it has been a great loss to them. A great friend has been lost in this tragic situation.

There are two levels of responsibility we must look at, namely, the personal responsibility of individuals and the responsibility of society. In that way, the shooting death of Sergeant Cooper is not unrelated to the work of this committee. The connection, of course, is that all of us must work together in a very concerned way to strengthen aboriginal communities so that aboriginal people can be healthier and less inclined to act in self-destruction and violence.

There are many levels at which change must take place. One of the most important of these, of course, is the constitutional level. For too long my people and the people of Treaty 3 have been denied their inherent right to self-government. That denial has led to the devastation of our traditional way of life, which has been accompanied by social and economic disintegration. There are many levels at which healing must take place. These levels range all the way from the personal level to the constitutional. Today we are dealing with the constitutional level.

The position of Treaty 3 is that Canada must acknowledge and entrench in its Constitution a list of powers that it recognizes as being the inherent right to self-government and the powers of the first nations. I do not mean that

henceforward first nations will get their self-government powers from Canada's Constitution. Quite to the contrary, what I am saying is that Canada must recognize that first nations have the inherent right and that the only remaining step is for Canada to recognize that inherent right.

We are the founding people on this continent, and it goes without saying that must be recognized in Canada's Constitution. In addition the Ontario government, now having recognized that in the state of political relationship first nations have the inherent right to self-government, must now take the next step and push for a new clause in the Constitution that will list the powers of inherent right to self-government.

In the present Constitution, section 91 lists the federal powers and sections 92 and 93 list the provincial powers. What I am advocating is a new section in this Constitution, for example a section 94, which lists the first nations' powers. This step must be taken before there are many further transfers of powers from the federal government to the provinces. By that I mean that the next run of constitutional discussions should not be the Quebec round but the aboriginal round. Quebec powers are already set out in the Constitution of Canada, along with the powers of all the other provinces. The rights of the first nations are not yet spelled out in Canada's Constitution.

Now Canada and the provinces want to renovate the Constitution, but without the full participation of the first nations. I find this entirely unacceptable. This is comparable to a big mansion in which Canada and the provinces are rearranging the rooms while the first nations remain sitting outside on the porch waiting to be admitted to that mansion. This is unacceptable to us. Neither is it acceptable that the first nations wait until the Quebec constitutional situation has been resolved.

First nations have been here before Europeans, and our rights must be acknowledged before further attention is given to renovating the Canadian Constitution in the interests of the provinces.

I also want to say a word about multiculturalism. First nations are not one of Canada's multicultural groups. First nations are a distinct founding people. We are not an ethnic minority. We are first nations that have a special relationship with Canada and that relationship must be acknowledged and implemented.

The constitutional responsibility for Indian peoples must be acknowledged as being with Indians, not with either the federal or the provincial governments. Accordingly, the question is not whether some of the federal powers should be transferred to the provinces, but recognition by both Ottawa and the provinces of the inherent right of first nations to be self-governing and what that means in the way of both Ottawa and Ontario giving up these powers that do not belong to them in connection with first nations people.

Finally, a few words with respect to the constitutional process: It is the position of Treaty 3 that Ontario must not take any positions forward to the constitutional table without the consent of the first nations. For all aspects of the Constitution that impact directly or indirectly on the first nations, any transfer of powers will affect our inherent right of self-government. The Ontario government has made a commitment to consultation with key sectors of society before making policy or enacting legislation that impacts these sectors of society. For the first nations, this means that Ontario should not go forward to the national constitutional table with any proposals that do not have the consent of the first nations.

I want to conclude by saying that it is the understanding of Treaty 3 that the matters I have spoken about are self-government matters and that they are the natural implementation of the historic recognition of our inherent right to self-government by Ontario.

I do not think I have anything much further to add to that. I listened to the regional chief, Gordon Peters, who spoke yesterday. He represented our positions in a similar manner as he addressed this committee yesterday. I will leave it at that, and if my colleagues want to make any further additions to my comments, they are welcome to do so. If not, then we welcome any questions.

1420

Mr Harnick: I was interested in your comment that you feel the first nations are not being given full participation with respect to the Constitution and deliberations involved in constitutional talks. Yesterday, Chief Peters seemed of the opinion that the parallel process was a process that the first nations would accept and that it was a process I believe he felt was as close to full participation as we have ever been able to find in looking for a method to provide full participation. I wonder if you could elaborate on that in light of your feeling that there was not full participation, and tell us what we should be doing, at least in Ontario.

Mr Fobister: I guess, first of all, that we do have some different situations where treaties are involved in other areas. There are different types of treaties in Ontario, in particular in our case, Treaty 3, where the province of Ontario was not a signatory. We believe we could participate in either way. In most cases what has happened is that we are quite flexible in that manner of going about and participating, whether it is in the way Chief Gordon Peters said yesterday. I could not make out clearly what he said yesterday, because I do not know whether this program came in the English version, but I was watching the French version yesterday. So in light of your question, I could not catch when Gordon Peters was specifically talking to that issue.

Mr Harnick: Do you think, though, that Ontario should be embarking on a parallel process of its own in order to be in a position to give the government the input it needs or should have when the next round of constitutional talks begins?

Mr Fobister: I believe that would be something we are going to be considering. Chief Peters yesterday mentioned the fact that we have a leadership forum in Thunder Bay next week and that is one of the issues that will be

discussed by all of the aboriginal leadership in Ontario. The other one was the parallel process that he talked about taking place across Canada. The initial meeting was in Morley, Alberta, with Mr Clark. I think that was the parallel process he was talking about. A similar process might be of great benefit to Ontario.

Mr Harnick: If you at your meeting discuss that, can you perhaps let us know the nature of those discussions and what direction you think we should be moving in? If there are any discussions in that regard, it may be helpful for us to know what direction you are moving in.

Mr Fobister: We are thankful for the opportunity to be allowed to give representation for Treaty 3 at this committee at this time, but we would also ask that after we have further discussions with other nations in Ontario, we would be allowed to return and, as you say, answer further questions.

The Vice-Chair: Just for the benefit of committee members, I think what I will do is go with one question and a short supplementary and go around and just do it in that way.

Mr Harnick: If I could just finish, certainly I would hope the Chairman would be able to accommodate you if that in fact is the way things unfold in terms of coming back here after you have had those deliberations.

The Vice-Chair: It would be something we would raise in the subcommittee. I do not think it would be a problem. We probably can work it out.

Mr Winninger: Chief Fobister, you mentioned you would like to see some powers spelled out in section 94 of the Constitution. We have also heard delegations indicating that they would like to see the powers already implicit in section 35 of the Constitution expanded upon and clarified. I just wondered whether these powers are spelled out in section 94 or section 35? What would you like to see on your wish list of power enumerated under one of those sections? How do you break down the notion of self-government?

Mr Fobister: We are looking at the sections. I mentioned sections 92, 94 and all that. We already have section 35, which recognizes the inherent aboriginal rights question. That power has to be maintained. I think the other sections play a role of their own. I think Chief Gordon Peters made that point yesterday, saying that we envision that these are different, they play different roles.

1430

Mr Winninger: It has been suggested that self-government can be a combination of history and also geography, that what is good for Grand Treaty 3, for example, might not be appropriate elsewhere in the province. What sort of powers are you contemplating that are not presently entrenched in the Constitution for Grand Treaty 3?

Mr Fobister: I will allow my colleagues also to answer. I think the part that is most important in terms of our powers is to have that jurisdiction we have always been requesting in areas of our wellbeing, jurisdiction over our lands. It is not to say that we are disfranchising ourselves from Canada or Canadians, but I think it is going to implement much closer ties with the rest of Canada or the rest of Ontario.

So the jurisdiction question is a very important process in this regard.

Mr Perrault: The jurisdiction question in fact is a little bit different in Treaty 3 territory than it would be, I assume, for other parts of Ontario. As the grand chief has said earlier, Treaty 3 was an agreement that was negotiated before Ontario was a government that had control of the land base that it now claims to have jurisdiction over. Treaty 3 territory consists of 55,000 square miles which extend into the province of Manitoba, and when we talk about a jurisdiction, we talk about a jurisdiction of our Ojibway territory. So that is a little different than maybe other parts of Ontario when they speak of jurisdiction or co-jurisdiction with Ontario for different resources or different activities within our territory. But we keep in mind that the agreement was a sharing agreement and what we want recognized is for that sharing to take place where it has not taken place, in the resources and the land that we now live in and Ontarians also live in.

Ms Gigantes: It is helpful for me to have you describe the territory involved and the history behind it. When one has not been raised with a history which includes native people, and that is true I think of most kids who go to school in Ontario and in Quebec, where I grew up, then an understanding of the background, what you are talking about, comes very slowly and things that we might have learned more easily as children become more difficult as we get older.

One of the things that struck me during the discussions yesterday and today is your expression of concern about the devolution of federal powers and how change in the power structures among and between the federal government and the provinces is something that has immediate consequences for the future of your peoples. I am wondering—in a sense I guess I am repeating David's question—whether there are certain areas which are more sensitive than others.

One that comes to my mind is the question of environmental jurisdiction. I have been struck, for example, with—which is not exactly the kind of matter that you would be dealing with—but the consequences for what happens to natives and non-natives if we see a devolution of environmental powers, for example, from the federal government and projects such as James Bay 2 become matters which the federal government has less interest in. Are there areas that you can name, such as the environment? Are there specific kinds of questions that you think about when you think about the change in distribution of powers among and between provinces and the federal government? Is there a priority of issues when you think of the potential changes that we may be looking at in the current round of discussions?

Mr Fobister: Although there has been great participation in terms of first nations in our area, we have had our share of environmental issues that we had to deal with in Treaty 3 coming from other provinces. Right now we are looking at various initiatives that are developing at this point in time with other first nations, such as the question of energy that exists now in Manitoba, Quebec, etc.

Ms Gigantes: And Ontario.

Mr Fobister: I think we are developing a mechanism of how we are going to be dealing with that in the future. So my anticipation is that it has become an increasingly concerning situation. I think we all need to work together, whether you are native or non-native. It is a very interesting question. Of course, I have my own personal views on it, and it is not to reflect on anyone else, but that is something we feel a lot of work needs to be done on. We feel it is going to be our participation also.

Ms Gigantes: In some cases I think we have had the situation in Canada where it has been of assistance on some issues to have a conflict between federal and provincial government, where one side will help out on an issue and another will be reactive or even retrogressive, but there will be a tension between the two in areas of jurisdiction so at least there is a public debate and a public discussion around them. I am wondering whether you think of that when you talk about changes in the structure of powers that we have in Canada now.

Mr Perrault: If I could give a response to the earlier part of your question, your question raises a fear in my mind when you talk about devolving environmental powers to the provinces, and the fear it raises is in the area you spoke of, Quebec. If that power was totally in the hands of Quebec, I would fear for the native people who live in the area where the devastation takes place, the flooding of the lands in and along James Bay or wherever. What does Canada say when Canada right now has a responsibility for dealing with the lives and wellbeing of native people?

Ms Gigantes: It could well have effects in Ontario too.

1440

Mr Perrault: That is what I say. The fear extends right across the country. That in itself, in our case in Treaty 3, would be our first and foremost fear. When the treaty was signed, it was on a nation-to-nation basis, Canada and the Grand Council Treaty 3, that part of the Ojibway nation which had an established government long before the treaty discussions took place. That relationship of one nation to another we believe might be weakened if there were devolution of powers to the province. The way we see it right now, our government would deal with Ontario on a different relationship, as a government to a government. It is a little different with Canada, where we are nation to nation.

Mr Fobister: I think this issue will be very important for Grand Council Treaty 3 in particular and it is something the committee has to look at in terms of its own relationship with other provinces, because the 55,000 square miles we talked about that Treaty 3 applies to, as we recognize our traditional land use area, extends beyond the Manitoba border. As we know, it is a crucial time where one of our first nations is extensively being involved with the water rights issue with the Manitoba city of Winnipeg; I think it is Shoal Lake first nations 39 and 40. That issue has been tossed around in terms of environmental issues between Ontario and Canada, where one has a little power on this side and the other one on the other hand.

It has been a question that the federal government has said it gave jurisdictional powers to the provinces to exercise jurisdiction over lands and resources, and that includes

water. In another sense the province is saying: "We have no direct responsibility with first nations. They are a direct federal responsibility." So what happens in their water is not an issue where the province takes that responsibility on native people. That has been a fundamental question, where the waterways in a Treaty 3 area have become a very serious question in terms of health issues and the environment. Waste disposal management has also been a very serious question, where both levels of government are not exercising that responsibility on first nations. We are starting to look at it in our own way. But there are going to be clashes in there and that needs to be looked at to see how we can compromise in terms of that jurisdiction.

Mrs Y. O'Neill: I am sorry I was late by a few moments. I wanted to strike on something we have not mentioned today, but I am sure it is going to be part of some of your discussion next week in Thunder Bay. I do not know very much about the Treaty 3 position on this at all. Would you tell me a little bit about the administrative relationships you have with the existing administrative structures, health, education, or if you want to breach the difficult one at the moment, of justice. I would like to know where you are with that structure and administrative relationship you have with the existing community, which we were fortunate enough to visit as this committee, as you know. We are certainly very happy with the kind of beginning Kenora gave to our work last February, and I thank you for that now.

I do not know whether my question is clear. I am not sure I can express it any more clearly. Maybe you can help me understand. Maybe I want to look at children's aid; that is maybe easier. How much of that are you doing on your own as part of your inherent self-government? How much of it are you still negotiating, and where are you with the negotiations, I guess is where I am really trying to go on this question.

Mr Fobister: I think I can allow Tribal Chief Brian Perrault to answer that question. He is more in line in terms of working with the tribal council level. There are presently two existing native child welfare services in Kenora. Maybe he can elaborate.

Mr Perrault: We started taking over some of the administrative agencies a few years ago. Where I am from, my tribal area in and around Rainy Lake and the Fort Frances area, those communities have worked together to put in place our own child and family services to keep our children at home and to deal with our problems in our communities. Most of the administrative things you speak of, the way we look at them, have to be community based and built on a foundation that the policies start in the communities and are presented by the people. The needs are looked at and solutions are searched for not only in administrative ways, what is the best way of doing things, but also with a great deal of respect for Ojibway culture and tradition.

We have a number of agencies, not only in the area of child welfare. We are also involved in dealing with our own mental health program, our own education authority, our own alcohol and drug treatment which, I am proud to say, we have been dealing with for so long and are starting to really make some strides in healing in our communities

and healing in our people. We believe those programs that are developed in our area, in our communities, would serve well in Canada anywhere and help all people. I am not sure if I am answering your question in any way.

Mrs Y. O'Neill: Yes, you are. I guess my follow-up is, do you feel we are on the right track with the way we are relating on this kind of matter, and how could it be accelerated? These are day-to-day matters. The constitutional one which many of us in this room are devoting a year to—maybe you have devoted your whole lives to trying to come up with some recommendations—is another issue. This is a much more practical issue and I am just wondering how you feel about what we are doing there and, as I say, how progress could be accelerated.

Mr Perrault: We always feel that as a matter of dealing with government policies, certain things have to be looked at. That is why we are moving in those areas to try to take over control of certain things that happen right within our communities. When I say "our communities" I do not mean exclusive to the reserve boundaries. We speak in Treaty 3 of our area, which is Kenora, Fort Frances, Dryden, Red Lake and all, even the municipalities. That is our territory, 55,000 square miles, and we have arrangements with other treaty nations, to the north of us the Cree, and further east a different people who signed treaties. So our relationship in Ontario is well-established and we feel at home within our territory. But equally because of agreements we have between our nation of Treaty 3 and Nishnawbe-Aski nation and the rest of Robinson-Superior and other treaty nations, we have an understanding among each other that we travel freely.

1450

But back to your concern about how I feel about moving in the direction of taking over administrative programs and stuff like that, that is a necessary thing we have to do but is not the whole picture of what we mean by self-government. What we mean by self-government is a recognition of the government and a recognition that Indian people have jurisdiction over their lives. That goes further to what you said, to what we are looking for to be entrenched in the Constitution. Self-government does not mean self-administration. It is part of it, but it is not the whole concept of self-government. Our government is our people, our culture, and things like that. But sometimes taking over programs is a necessary thing we have to do.

Many times, some of the programs we have tried to take over from the federal level seem to be started almost in a fashion where they are doomed to fail because they are so greatly underfunded compared to when the federal government was handling them. So that is a problem. It is a problem when we are expected to be much more effective than a government-run program because we want to take it over, yet we are much more underfunded to do that same work.

Mrs Y. O'Neill: I am very happy that what you have said is, I think, almost identical to what Chief Peters said yesterday, if people can reflect each other's thoughts, and that is very helpful to us when we get similar input on a very critical issue.

Mr Fobister: I just wanted to make a little bit of addition to it, that Treaty 3 is an association of chiefs which deals with political issues. When you discussed the services moving away from the north, there is a devolution taking place between two levels of government. When you talk about whether the pace of service delivery is effectively moving at the desires of the people, sometimes when you look at a situation like that, the north pretty well was self-sufficient at one point in terms of trying to deal with these problems. When there were no other forms of government around them or policies that would dictate otherwise, another form of government came to their territory. That was prior to 1960. When that happened, the influence of these policies, which were developed much more in a southern area, did not address the real needs of the north. The north is always disadvantaged. Again, the devolution starts from the south and goes up to the north. It is not a very good policy on the part of Ontario.

Mrs Y. O'Neill: And there is still some fallout from those original policies, is what you are saying.

Mr Fobister: Correct, yes. We are the last to be considered and we are the first cut to take place.

The Vice-Chair: I have a question which is, I think, one that not only the first nations are going to be struggling with over the next number of years, but politicians and Canadians in general. As you understand it, as probably most people who are involved in this issue understand it, there has not been a real definition as to what form self-government should take within the first nations people. If you speak to different groups, the vision is somewhat different. I do not think that is unlike any other issue. If we look at the constitutional dilemma we find ourselves in today, if we look at what the problem is, it has always been that we have never been able to get a consensus on any one particular issue from one particular group, either Quebec or the question of multiculturalism, the question of the first nations, or whatever.

I guess where I am getting to is that when you spoke earlier you said you were in favour of what is basically an enumeration of powers within the Constitution that would spell out clearly what self-government is and what powers would then be the responsibilities of the first nations people. If I speak to other native people from other areas, they see it somewhat differently.

One suggestion that was made is that you would make a statement within the Constitution, possibly the Charter of Rights, that would say, "The Constitution recognizes the first nations as having the inherent right of self-government." Then that would be defined, with time, by the first nations people themselves. How do you marry those two together and how do you allow the mechanisms by which all of us within the country can come to some sort of definition of really what this means and how it is going to work? I am not looking specifically at how it is going to work but how you make that happen. I do not know if you understand what I am getting at.

Mr Fobister: If I understand correctly, in our own perception we have always had self-government, we have always had a government that pre-dates Confederation and

the existence of the Ontario government. It has always been there. We reiterate that statement of having that. When the treaties were made in terms of Grand Council Treaty 3, that relationship existed. That was the intent of that treaty, a relationship. It has nothing to do with a conqueror and having to make laws; the laws were already here.

I think we have to revisit and look at how it was and try to understand the emphasis of how people were self-sufficient, were self-determining and what laws were there. Of course, native people never documented or recorded laws. As we see it, how do you begin to implement that process?

This is the first time Treaty 3 has come to the table to have a dialogue with the province of Ontario, although we have participated in other forms of discussions in the past, more or less to facilitate the arrangements of other first nations and political territory groups in Ontario. We worked there for the sake of participation in that form of support. I think now we are in a discussion where, first of all, the fundamental thing is that there has to be a recognition of our treaty rights. Once that is established, it does not take much to take a path to develop what those rights were that existed with people.

1500

When we talk about self-government, it is going to benefit the people we have to live with, and that is the municipalities. It brings in other groups, whether they are urban Indians, whom everybody has so many concerns about, what is going to happen to them, women and what their rights are, the Metis and all these groups. It all fits in if you study that process. It is a Constitution. My elders have pointed out in the past that it is a God-given thing, it is something that is given to you when you are born. It does not come from man. It does not come from somebody who just steps in your door. It comes to you.

Mr Perrault: The question I thought you were raising was that if Indian government is to be recognized in the Constitution, would that be defined by the different nations, because they are different governments, different first nations? In our case, we know our government and way of looking after ourselves quite probably are different from different nations out on the west coast or wherever, anywhere in Canada. But in the same fashion, if the powers of the provinces are defined in the Constitution right now, are all provinces' governments structured in the same way across the country? I do not know this.

The Vice-Chair: Good point. I am wondering how you get from here to there. The one thing I think most people recognize is that self-government is something that has to be defined by the native people themselves. You entrench it possibly in the Constitution, as far as putting it down on paper is concerned, but as far as the development of self-government is concerned, it is something that is obviously going to be developed by the first nations themselves. The agenda is somewhat different from one council, possibly, to another and how that should be done. There are different models that are proposed. I was just wondering if you could shed light on that, because you had spoken about enumerated powers, but when you speak to some other people they talk about not enumerating powers

but rather making a statement in the Constitution and after that developing it themselves as they go along.

Mr Perrault: I do not think the two statements are as far from each other as you spoke of. What the grand chief has said and what the regional chief has said, I think, can be very close.

Mr Miclash: First of all, gentlemen, welcome to Toronto. I understand the weather is much nicer back in Kenora, probably a place we would much rather be on such a hot day.

Something that Chief Peters spoke about yesterday was the involvement of youth and the past involvement of youth. As we know, today we are making a lot of decisions that are going to affect youth in both your society and the society as we are approaching their years to sort of take over. How are you presently involving the youth of Treaty 3 and how do you plan to involve your younger people in terms of the negotiations coming up and in terms of the whole situation?

Mr Perrault: If you are speaking of taking direction politically from the youth, that is something that has yet to happen. We always do have young people involved in and around our assemblies, maybe not participating in the debates but always willing to give advice as much as, in the same case, the elders are. Maybe I just am not understanding your question.

Mr Miclash: I am thinking more of a way of getting what their visions are for the future. We have a good number of them attending post-secondary educational institutions. As we know, that number is growing. They must have some input. I am just wondering how that input is going to come to the forefront.

Mr Perrault: Certainly, most of the input they have had up until now—and I like to consider myself one of them. We believe there is a time for change in this country, a change in our attitudes and a change in educating each other about who we are as Canadians and as Indian people in Canada. There is that. There is also a cry for help from our young people to be able to go out and gain the expertise they are going out and getting and to be able to have something to bring back home and apply it to.

I see some of the articles in the paper, as there is today, about a large population that moves away from the reserve. Aboriginal people are not all on the reserve and I do not believe we have to be. As I said before, to us our territory is our territory. A reserve is something that we reserved exclusively for Indian people. Our territory is for all of us to share. There are strong messages coming from

youth and probably a lot of different messages. The one message that I heard Chief Peters mentioned yesterday is one of the messages coming back, but also there is a message from them telling us that we are losing things. We are losing our culture. We are losing our language. We have to ensure it is going to stay with us. It is our young people who are saying that. They are the ones who are wanting to know from the elders, how do we hang on to these things?

The Vice-Chair: Are there any other questions? Are there any comments you would like to make before closing on this particular part? Is there anything you would like to add at this point?

Mr Perrault: No other comments. I would just like to thank the committee on behalf of the communities I represent in the Treaty 3 area. We thank the grand chief for speaking for Treaty 3.

Mr Fobister: We thank you for the opportunity you have given us to make our presentation here. I guess as a final thing, you have also expressed that we have the opportunity to come back if we have anything else in terms of how we might concur with some of the statements we have made to you, how we stand together on issues with other groups that may be putting their presentations before you. I am glad we will have the opportunity to come back and make a clarification on those issues.

The Vice-Chair: On the part of the committee I would like to thank you for taking the time to come to make your presentation. Certainly in the interim, before we get to the point of possibly getting back together, if there is something you can pass on to the committee in regard to speaking more specifically some of the points that you raised, it would be, I think, greatly appreciated on the part of the committee.

On that, I would like to say that we will adjourn at this point for about 10 or 15 minutes until our next presenters. We stand adjourned until then.

The committee recessed at 1511.

1530

The Vice-Chair: The committee reconvenes. It has been brought to our attention that the Ontario Metis and Aboriginal Association has had a situation arise and that they are not able to attend this afternoon. They have asked to be rescheduled at a future date. It is something I am sure the subcommittee will be able to deal with.

With that, we will be concluding until tomorrow at 10. The committee stands adjourned until then.

The committee adjourned at 1531.

CONTENTS

Tuesday 30 July 1991

Grand Council Treaty 3 C-1187

Adjournment C-1192

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

- Chair:** Silipo, Tony (Dovercourt NDP)
- Vice-Chair:** Bisson, Gilles (Cochrane South NDP)
- Curling, Alvin (Scarborough North L)
- Eves, Ernie L. (Parry Sound PC)
- Gigantes, Evelyn (Ottawa Centre NDP)
- Harnick, Charles (Willowdale PC)
- Harrington, Margaret H. (Niagara Falls NDP)
- Malkowski, Gary (York East NDP)
- Mathysen, Irene (Middlesex NDP)
- Offer, Steven (Mississauga North L)
- O'Neill, Yvonne (Ottawa-Rideau L)
- Winninger, David (London South NDP)
- Substitutions:**
- Martin, Tony (Sault Ste Marie NDP) for Mr Malkowski
- Miclash, Frank (Kenora L) for Mr Offer
- Wessenger, Paul (Simcoe Centre NDP) for Ms Harrington
- Clerk:** Brown, Harold
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- Kaye, Philip, Research Officer, Legislative Research Service

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Le mercredi 31 juillet 1991

Select committee on
Ontario in Confederation

Comité spécial sur le rôle de
l'Ontario au sein de
la Confédération



Chair: Tony Silipo
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Table of Contents

Table of Contents for proceedings reported in this issue appears at the back, together with a list of committee members and other members taking part.

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Table des matières

La table des matières des séances rapportées dans ce numéro se trouve à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et des autres députés ayant participé.

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au (416) 325-7400.

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

Wednesday 31 July 1991

The committee met at 1016 in room 151.

The Vice-Chair: Come to order. I welcome everybody back to this, our third day, if I am counting correctly, in the hearings of the select committee on Ontario in Confederation. We will get right into our hearings.

ONTARIO NATIVE WOMEN'S ASSOCIATION

The Vice-Chair: We have with us this morning Corrine Nabigon, from the Ontario Native Women's Association, who is going to make a presentation on behalf of her association. Go ahead.

Mrs Nabigon: Good morning. Let me see if I can still talk. I have a really bad cold. I will proceed with my presentation.

My name is Corrine Nabigon and I am the president of the Ontario Native Women's Association. I am with the Ojibway nation. I am very honoured and pleased to be here to do this presentation. I would like to thank you for the second opportunity to present our views to the select committee on Ontario in Confederation. In addition, the Ontario Native Women's Association appreciates the unprecedented commitment of the province in the negotiation of a statement of relationship with aboriginal people.

The last Confederation was structured without consultation with aboriginal people. Part of the problem over 100 years ago is that the Fathers of Confederation did not negotiate in good faith with Canadian women and first nations. Before a satisfactory Confederation can be structured, a proper process must be created.

Aboriginal women speak for and represent ourselves at all levels of decision-making on all issues that affect our lives. We advocate for the equality of access and defend the rights of all aboriginal women, regardless of place of residence and status. We request that Ontario support and insist on the inclusion and participation of aboriginal women during the next rounds of constitutional discussions.

Fifty to sixty per cent of aboriginal people are women. One in every 34 women in Canada is aboriginal. Many reserves have 90% unemployment, at best 60%. The unemployment rate for aboriginal women is twice that of aboriginal men. Most of our households are led by single parents, and aboriginal people have the highest birth rate in Canada, at 3.5.

We know what it is like to struggle. A number of our reserves are legislatively created ghettos. Often, welfare is the only alternative for income and survival, without access to unpolluted lands and resources and the economic infrastructure to provide jobs.

Many of our people continue to be migratory and hunt and fish for subsistence. It is a sad reality that despite the Sparrow decision which confirmed the aboriginal right to hunt and fish for food, aboriginal people still encounter harassment from the Ministry of Natural Resources.

Members of our native women's locals report to us that this still goes on today.

In unity with our aboriginal colleagues, we advocate for the recognition of aboriginal people as the original first nations of this continent. We take our role in the economic, political and social development of our nations very seriously and we seek support and assistance for our initiatives through the allocation of funds for legal expertise and grass-roots consultations.

In addition, there is a clear need for the federal government to get its act together on aboriginal affairs and begin negotiating in good faith rather than secretive back-door negotiations and rhetoric that undermines the unity and vision of our leadership.

Since Canada became a nation and claimed dominion over our lands and our people without our consent, we have been struggling to be heard and we have been requesting respect for our first nations' status, treaty and inherent rights. We urge you to relay the message that before the provinces and the federal government divvy up this nation, they should determine with the aboriginal people exactly what they have access to to divide.

Furthermore, quick land settlements are not fair settlements. Land settlements negotiated with aboriginal people absurdly divided and classified as status Indians on reserve, off-reserve status and non-status Indians, Bill C-31 and Metis will be to our detriment. An aboriginal person is aboriginal no matter where they reside in their territory, which goes beyond reserve boundaries. The rules and definitions of "Indian" and the reserve system did not originate with our people. They are non-aboriginal creations.

Aboriginal people equally have a right to the legacies of our ancestors. This includes the right to resource development and revenues earned and an aboriginal education. Currently, chiefs are able to discriminate against off-reserve band membership and Bill C-31 membership. This is, in all likelihood, in conflict with the Charter of Rights and Freedoms. It is time for the federal government to accept our definition of aboriginal women.

Here I would like to give you an example. I belong to Longlac 58. That is the reserve which I have status to. For a number of years now, I have been requesting to return back to my community and have put in an application for housing. To this day, I do not have housing in my community.

It is imperative that we receive the resources and the land base that we require in order for us to be able to return to our communities, to be able to work with our communities, to be able to take back the information, the knowledge, the teachings that we have acquired living in urban centres, in order that we can bring about the unity and the education required among our people who are suffering from abuse, from family violence situations. We all know why those abuses are there. It goes back to the

boarding school system and many other things that we have had to endure and suffer through as we were growing up as children.

In order for us to make that positive, creative change among our people, it is people like myself who have had the opportunity and who have left family to go out into the broader communities and seek that knowledge from your people, from many different cultural backgrounds, from your elders, along with the teachings of my elders, and can now go home, can go back to our grass-roots people and be able to make the change so that your children, your grandchildren and my children can live in harmony. It is crucial that all of us work together to ensure that this world becomes a better place to live in.

Aboriginal ownership of our lands is a crucial political and economic issue across the country for all aboriginal people. Due to the fiduciary responsibility of the federal government for aboriginal people, the people of Oka still do not own the traditional burial ground that was targeted for golf course development. The land is held in trust by the same federal government which failed to resolve the conflict before the violence. There are clear problems with our relationship with the federal government which are currently being explored by many of our leaders.

In addition, any revenue earned from land use is placed in a trust fund somewhere in Ottawa. Why? Why is this so today? Why can we not at least get the interest that is being accrued from that revenue in order that we can have the resources that we require to develop that economic base? You as well as I know we need an economic base in order for us to join the mainstream of the Canadian peoples.

Many band members do not have access to information on establishing access to the development process. That is costly legal information Indian bands and Indian organizations cannot afford. That in itself is a barrier. A few bands have gone ahead with alternative funding arrangements to control their resources. However, many have been so damaged by the poverty and years of brainwashing that they are not ready to handle their economic affairs. Many are in a catch-22 position and have the irresponsible federal government to manage their affairs.

I worked with the federal government for five years specifically to find out how they were managing our affairs. On several occasions I questioned why they did things the way they did. That is taxpayers' money, and I believe the federal government has to sit down and stop moving and take a good look deep inside their hearts, and ask themselves the question: "Why are they here? What is their purpose in this life? And what, in fact, is their responsibility to the native people?" It is through the native people that they can learn about their purpose in this life, only if they would listen with open hearts and open minds to what it is we need in this life, to accomplish what it is that we must do.

Due to the dramatic increases in the aboriginal population since the passing of Bill C-31, bands are faced with housing shortages. We need more resources and land to meet these basic needs. Our concerns are similar to those of French Canada, although our sovereignty is unquestionable. As the French have their distinct language and political traditions, aboriginal people have distinct languages, cultures,

sociopolitical customs and philosophies. Similar to the French, there should be a constitutional commitment that aboriginal people receive education in our own languages, whether it be Cree, Ojibway, Mohawk, etc. Past governments have gone to tremendous lengths to undermine our customs. However, like the French society in Canada, we have endured. We are not going to go away and we are not going to fade into the scenery.

Long-term, past and present environmental and social impact assessments should be constitutionally mandated to reflect our Canadian commitment to uphold the health of our lands and our people. We must look ahead for the generations to come. If your great-great-grandfathers had held this outlook, we would not be in the present-day environmental crisis that we are in. It is our responsibility as first nations people to ensure that mother earth is respected.

We will not allow our inherent rights and responsibility for the land to be cut up and divided, undermined and thrown under the constitutional table. We implore the province of Ontario to take a leadership role in allowing us to negotiate and resolve our issues with the federal government.

Aboriginal people have many lessons to teach Canadians on issues such as environment, democracy, preservation and survival. Strong first nations would be a benefit, not a threat, to all of Canada. Our people are very tolerant. It is our ancient way. We have put up with abuse, derogatory legislation and non-commitment from governments for far too long.

Responsibility requires that we speak up and be of assistance in the new Confederation of Canada. Traditional teachings say that before you make a decision to act or create a rule or mechanism, you must examine the impact your recommendations will have for seven generations into the future. This requires long-term vision, not short-term goals for political expedience.

I would like to give you an example or a teaching that came my way several years ago by a young girl who was nine years old at the time. She came to me and stated that our world is in a very difficult position. These are very difficult times. The native people are now on the ground, with their faces in the dust. We have to get up and shake the dust off ourselves. We must learn our language, we must get back to our teachings, we must seek out the elders to provide us with those teachings. We must honour the Creator, because it is the Creator who allowed us to be here today. We must go back up on the mountain with our tobacco in hand and honour the morning, honour the energy of the sun, because without that energy we will not be here. We must get back to our responsibility of taking care of mother earth. It is our responsibility.

I turned to her and I said, "Where did you read that?" because there is a book called *Cry of the Ancients* that I read many years ago which said that very same teaching. She said, "I did not read that anywhere. I had a visitor last night who came to me who was an elder, who had long grey hair and he sat by my bed and he told me the story. He said you must go out and tell people." She said, "I do not know how." He said, "I am telling you to tell everyone you meet these teachings." The elder furthermore stated that if we did not do anything about this situation this world will explode. That was her story.

We as native people are struggling to do this. The Creator created all races, and we have to work together in unity, with respect for one another. There is far too much discrimination in this society among all people. We have to change that, you and I.

It does not make any difference how we look on the exterior, it is what is inside. It is the spirit that we house. I believe if each and every one of us today did something positive to create that change, we will be one step closer to doing what it is that we are all getting paid here to do. Meegwetch.

1040

The Vice-Chair: First of all, on behalf of the committee, thank you for your very from-the-heart presentation and a fairly clear message. There are some questions on the part of some of the members of the committee.

Mr Winninger: I would like to thank you for your very uplifting presentation. We have heard during the second stage of our proceedings from several of your male colleagues, and they have told us what they would like to see in a reformed Constitution, and that might include a Canada clause which would convey the distinct nature of first nations. It might include an expanded section 35 which would clarify the inherent right to self-government and spell it out very clearly. It might include powers enumerated in section 94 of the Constitution Act which would spell out the kinds of powers that native people would like to exercise.

I am wondering today how the Ontario Native Women's Association fits into that view, not only the process, because I know that the Chiefs of Ontario are making a greater effort than ever to include women, urban people, young people, and elderly people in the negotiations being carried on in their parallel process. I am just wondering, though, whether your vision of what should be in the Constitution would be assumed under what they are asking for or whether you would like to see a separate expression of the rights of native people spelled out either in a Canada clause or in an inherent self-government clause for enumerated powers.

Mrs Nabigon: First of all, I would like to review what the other aboriginal peoples are, in fact, saying should be in the Constitution. But, at the same time, I would like to state that it is imperative to incorporate the equality of aboriginal women into the constitution. The wording we can certainly provide to you from our office.

Mr Martin: I also want to echo the appreciation for sharing with us today your thoughts and feelings, and certainly your dreams and visions. I wanted to let you know that I was deeply touched by them and by the story you told of the young girl. I think it is just such stories and the emotion that you obviously carry with you, and the feeling in your heart that will help us arrive at a place where all peoples can be respected and contribute in a positive way to the evolution of our country.

I think you are on the right track; you need to continue to challenge us, because it is difficult for us coming from the place that we do, many of us, our culture and our education, and the way we have been taught to think and to rationalize things. We do not always connect the head to

the heart, and I think you and your people do that in a very meaningful way, and we need to hear more about that.

It is my hope and dream that Canada will evolve in a way that respects what you have to say and that you, as a people, have to offer. Your understanding of the connection between the earth, the creator and us as people will guide us in the decisions we make. I do not know how you write that down, or put it into words, or enshrine it in legal language. I think more than anything it has to be a sense of respect one to another and between peoples.

You mentioned at one point here, in respect of settling land claims, that we move too quickly. I have a sense that we, as a country, at this time are trying to rush a process that needs to evolve. Am I hearing you say that you, as a people, are beginning to discover the dignity that was lost? I suggest to you that we need to do that too, and our relationship with the Creator and mother earth. Do you have any further thoughts on the kind of timelines we need to be looking at regarding this whole process of constitutional discussion, and arriving at a place where we might move ahead rather than being stuck in the mud, as we seem to be at the moment?

Mrs Nabigon: First of all, what is your time frame? You know, it is not what I think.

Mr Martin: I certainly do not know the answer to that.

Mrs Nabigon: What is the time frame for the Constitution? How long before it is in effect?

Mr Martin: I suppose that is probably one of the questions that is up for grabs at the moment. Every province seems to be going through the same process we are, and the federal government certainly has two or three committees out there doing things. I think you had mentioned process, and process being really important. There seem to be some who want to get it done right away and get on with life, and others who would take the time necessary to include all the people who need to be included and to have the discussions that need to be held.

Mrs Nabigon: All right. What we require in order to do quality workmanship is the resources for us, as an association, to go out into the grass-roots community and provide this very information that we are exchanging at the grass-roots level, in order to have sessions with the community. We have to remember that we are looking at a language difference, we are looking at people who cannot take the written information and read and decipher it. Even I, being semi-educated, have difficulty figuring out what that one word can mean and what it will mean 10 years down the road or 100 years down the road, because of the changes that one word can create.

We need to get out into our communities and meet with all community members and have these very discussions in those communities. However long that takes is how long we are going to need. Once we get the resources to do that and the people in place to do that, then we could work together and let you know how we are progressing. From there we would be better able to figure out the time frame that is required.

1050

Mrs Y. O'Neill: May I say that the native women have continued to make a significant contribution to this committee from the very beginning, actually from our very first day on February 4 in Kenora. I am very pleased you came today because I feel your presentation was extremely well balanced: spiritual, intellectual, economic, physical—you put it all before us. I find there is a wholeness about presentations from aboriginals that maybe is lacking from some other groups.

There are so many things I would like to ask you, and I have to be within limits of time. First of all, I appreciate deeply what you are saying about resources. Could you tell me if you have a permanent or ongoing connection with the women's directorate of the province of Ontario?

Mrs Nabigon: Yes, we are in communication with them.

Mrs Y. O'Neill: Would that be your main source of funding for the kind of projects you are talking about: self-help education groups among native women?

Mrs Nabigon: The women's directorate does not really have the resources we require to facilitate the kind of movement we need. They have only a minimal amount of money and our locals are able to access it, but as an association they are not adequately funded to meet all the needs.

Mrs Y. O'Neill: So that would be something that we should certainly be considering as a serious recommendation: that either that particular area of the budget gets more funding or there is another line in the budget for that kind of self-help?

Mrs Nabigon: Yes.

Mrs Y. O'Neill: I would like you to tell me a little bit about what you intend to do—and I presume you have quite a strong leadership role here—regarding the Assembly of First Nations now and this parallel process. Chief Peters was quite clear in his preparation for the meeting next week in Thunder Bay. He suggested that these constituent assemblies which would emphasize youth, women, elders would take place throughout most of the next year. Will you play a leadership role in all that?

Mrs Nabigon: Yes.

Mrs Y. O'Neill: Could you tell us how you are going to do it and the kinds of needs you will have as you do it?

Mrs Nabigon: I have been on vacation for a couple of weeks, trying to be on vacation, and I was approached yesterday by our policy analyst from the association because we have received correspondence to that very effect. We will be involved with the constitutional discussions with the Assembly of First Nations. I have not yet sat down with the staff to discuss how we are going to do it. I am sorry, I am unable to provide you with that information, but any of the individuals here today are welcome to call our office if there are any further questions regarding any of these issues.

Mrs Y. O'Neill: You asked about timing. All these things have some kind of time limit. Our final report to the Ontario Legislature is due by the end of November, so if you have some readings and have already done some work

of assembly, particularly with women, and have something you can give us in writing, we would find that very helpful.

You challenged us on this committee, and said that Ontario could take a leadership role with aboriginals. I think we have begun to do that. I hope so. I think it is looked upon in the country as such. You may or may not know that we are going to be in touch with the other Constitution committees. We are actually going to be meeting with several of them. No doubt the aboriginal issue will be one that has top priority.

I guess it must be of some consolation to you—and I know that your path has been long—that the aboriginal issue now seems to be fully on the table, maybe more so than it has been across the country, and it does seem to be something that all people in Canada realize has got to be, as you say, looked at from the depths of our heads and our hearts; that it is not going away, nor should it go away; we all will lose if it does.

I thank you very much for your presentation. I, too, was certainly moved by your sincerity.

Mr Curling: I just wanted to ask you about the process. Although I was not here I was listening to you on a TV monitor upstairs.

The Ontario government has set up this committee to hear the many people who felt they wanted to participate in bringing about a Constitution for this country. Do you feel that having done so, in making your presentation, or did you feel even before coming, that the reception you would get would be meaningful? In other words, those things that you said from the heart, that you have been living with and your ancestors have lived with for years, as this is your country, did you feel that what you said would make some impact on a parliamentary committee like this and on its presentation regarding the Constitution?

Mrs Nabigon: Yes, I believe that it will make an impact.

Mr Curling: I am a new member on this committee and I have listened to my colleagues' commendations about the contribution of the aboriginal people of this country. I may be looking at it too as a new immigrant—just 25 years here. I feel as strongly Canadian as anyone could. I feel at times even when it is said, although they intend us to listen and to understand, that the message is not there. I heard you saying earlier that you have to go out to the communities. If this hearing were within the community, do you feel it would be better understood?

Mrs Nabigon: Yes, it definitely would assist our people in the communities. We have, for many years, been asking the province and the federal government, particularly, when we do have meetings that these very meetings take place in our communities because it is a good way of exchanging information; you too can come and see what our conditions are and what our lifestyle is in our communities, because it varies.

Mr Curling: Do you feel you are educating the legislators about aboriginal women, or are the legislators educating you about the process of the Constitution and how it is written? Do you feel it is an equal exchange, or is there a long way to go for legislators of this province to understand what aboriginal women are concerned about?

1100

Mrs Nabigon: I appreciate the invitation to be here as a human being and then as a native woman, mother and grandmother to speak for positive change for all aboriginal people.

Mr Curling: So you feel we both learn in that process.

Mrs Nabigon: As far as having the information that is required, I feel it is imperative that our association for native women have the legal expertise that the province has, that the federal government has, that we likewise have the same respect in that we have the resources to be able to have that legal expertise on staff. That is what we require.

The Vice-Chair: I have a question. In the middle of your presentation you had spoken with regard to the whole need of governments maybe rethinking what their role in life is. Those are the words you used, basically. You talked about the federal government and I guess it would be the same for us, how we should rethink basically what governments are all about, where we need to go and how that would fit in with regard to the needs of native people.

The question I have is, how would you envision what the role of government would be, and also how do you balance the competing interests governments are faced with? If we look at the question of land use with regard to the whole question of settlement of native land issues, how would you approach that?

Mrs Nabigon: I believe that would require further discussion between the federal government, the provincial government and the aboriginal people in order for us to sit down collectively and listen to one another and then from that point be able to formulate how we would approach that very issue.

The Vice-Chair: Thank you. Did you have any closing comments?

Mrs Nabigon: Yes, I would like to take this opportunity to thank each and every one of you for listening to my presentation. I wish all of us Canadian people every success in that we will be able to live together in Canada with respect, balance and harmony so that our children and grandchildren will have better lives than I myself have had as an aboriginal person in Canada.

ABORIGINAL URBAN ALLIANCE

The Vice-Chair: We call as our next witness Andrew Rickard from the Aboriginal Urban Alliance. Mr Rickard, if you will come forward. It is a pleasure to see Mr Rickard back. If I remember correctly, he had presented before us in February.

Mr Rickard: Mr Chairman, ladies and gentlemen of the committee, I am pleased to take this opportunity to appear before you again, after my previous presentations in February of this year in Timmins and my own individual presentation as an Ontarian on February 28 here in this building.

I understand we have a new Chairman, having lost one to a more lucrative responsibility. Maybe it is a good training ground for cabinet ministers, and I wish you all the best in your political aspirations.

I have read your interim report, which I found very interesting. I was a little disappointed, however, that most

of my significant concerns that I thought were important were not really included in the report. However, I am also aware that committees made up of three political parties cannot possibly consider and cover every presentation that is made to this committee in its hearings.

As indicated in your mandate established in this Legislature, on December 20 the 12-member, all-party committee was authorized to review and report on two main things: one, the social and economic interests and aspirations of all the people of Ontario in Confederation; and two, what form of Confederation can most effectively meet the social and economic aspirations of Ontario.

Those two very major areas undertaken I think we can all appreciate as a monumental task that will probably take you another 50 years to achieve, or at least scratch the surface. I do not say that to be facetious; I am just acknowledging the enormity of the work you have to do.

To fulfil your mandate, you were supposed to come up with an interim report by March 21 of this year, which I received, and I am sure other people have as well. Unfortunately I did not receive your June 27 report, the final report of your series of hearings, in which a two-stage process would have been created. So, ladies and gentlemen, if I did not receive that report, how many other people do you think have not heard about it, especially the final conclusions on the first rounds of your hearings? In fact, what are your future directions?

The Vice-Chair: Mr Rickard, the final report is not intended to be delivered until November, after these parts of the hearings. That is why you have not received the one from June. We had just an interim report at the end of May, beginning of June.

Mr Rickard: Okay, I am just giving you my personal perspective from where I stand and I am sure a lot of people feel the same way.

However, on the 19th of this month, July, I received 10 pages of a partial document from the clerk of the committee, which indicated the committee had framed a series of questions under a number of subject areas covering, for example, the Canada clause; multiculturalism; women; disabled persons; the Charter of Rights; social and economic rights; aboriginal people; Quebec's future in Canada; roles of the federal and provincial governments; the economy; the roles of English and French languages; national institutions; and the political system and process of constitutional reform.

In our so-called participatory democracy, I often ask myself, and I am sure a lot of other people do as well, how many Ontarians do you think are in a position to respond to all these questions? For example, as an aboriginal person, am I expected to play the narrow-minded role, if you will, to respond only to aboriginal matters? What about the many people of Ontario who are functionally illiterate, who cannot read or write a given language? What about my own people and many others who do not understand the basic English language or even the English or French languages?

Ladies and gentlemen, these are very fundamental questions and they are the real world. I think any government

has a challenge to respond to these very equitable questions I am presenting here, sooner or later.

1110

To answer all the aboriginal concerns would take me a month of preparatory time and at least three or four hours of presentations before you. You see, for you to fully understand what I would like to explain in detail about my own people will take considerable time. I need to draw diagrams and pictures to show you our chronological history, not the history from your teaching systems or your libraries but our own history.

I need to explain our concept of land and resources, our relationship with the environment and our very sacred commitment to sustainable existence. We have been saying these things for the last 30 years. Finally everybody is now concerned about the environment, for example.

I also need to explain why and how our value systems are diametrically opposed to yours. I have to explain that your form of democracy is not necessarily applicable to every situation and to every person. I need to explain in detail, using your language and your value systems, our approaches to aboriginal issues in Canada and why they cannot be resolved just by using the white man's political systems or his status quo institutions. These will all have to be properly explained.

Finally, in order to properly respond to the over 130 questions I referred to earlier, it would take me almost a year to do relevant research on these subject matters, perhaps another several months to write up my report and proposals with substance and at least two full weeks of presentations here to this committee.

Ladies and gentlemen, what exactly am I saying? My brief presentation here this morning is very simple, and may be only general and has contained in it only motherhood statements and clichés, because that is all I can say right now. I am not speaking to you in my own language as I did in Timmins because you would not understand me anyway. Because you do not understand me I am giving you the courtesy of speaking to you in this language. I mastered it, so I am communicating with you in English and would certainly hope, in reciprocity, that you would some day learn my language as well. Maybe your children or grandchildren will learn to speak it so I can speak to you and you can speak to me in my language.

I am told I have probably an hour to make a presentation here, so I want to make the most of it. As I make this presentation I will paraphrase certain statements you have in my written presentation because I have to explain a number of things in some of those areas as we go along.

For the record, I want to make it clear that I am not interested only in aboriginal issues as a means of dealing with the severe socioeconomic problems facing my people throughout this province and indeed across the country, because I know that all aspects of the economy, perceived, real, imagined or illusory, have to be considered. The taxation systems also have to be analysed with respect to the many things our people are saying. National unity matters have to be addressed with respect to those concerns of my people, environmental concerns, and as well, a very significant look at a balanced rule of our national government—

some people call it central government—with provincial and territorial jurisdictions must be the critical elements from which to plan with in order to respond to all these questions that have been put before you, and some of those presentations that many of our people are making to the government and the federal government.

In order to deal with the roots of our aboriginal challenge, as I call it—we call them problems or issues or whatever; I like to see them as challenges in this country—all these factors I previously mentioned have to be incorporated in the process.

Since I cannot respond directly to every question raised in your document I referred to earlier, which I only received within the past week or so, I would like to also deal with some of these areas of my own people in the form of questions looking at the fundamental aspects of these issues, followed by some recommendations towards the end of my presentation. I would also be happy to answer some of the questions you may have in respect to some of the points I am presenting here today.

First of all, I wish to briefly explain that our people are not only genetically different vis-à-vis mainstream society, but our socioeconomic, cultural and spiritual values are also very different and distinct. Our biological functions may be the same: We see the same; we taste the same; we feel the same, that kind of thing. Our hearts function the same. In fact, our blood may be the same colour. If we were to discharge a pint or two, you could not tell the difference. While our physical and psychological needs may be the same as well, our attitudes and means to fulfil our basic needs are very difficult to understand, and they are different. And unless we understand the fundamental difference of all these things I am talking about, we will never begin to totally resolve our aboriginal issues, national issue challenges, the economy and other socioeconomic challenges that have defied solutions in this country for a hell of a long time.

So let me briefly explain some of the points I am talking about. Let's talk about democracy. Under the current setup, I think it is clear that it does not provide all the answers to our challenges of the 21st century. We still have a status quo mentality. Institutions are all geared to that function.

Let me take you back in time, say about 500 years ago, before your ancestors came over here—for a brief visit, as we thought at that time. Where I come from, every person back then played a very significant role in everyday life, from education to the subsistence of that community, families and so on. I have with me three advisers at the back, three of my children. Two of the boys will be carrying briefcases. They would either be land claim lawyers or hockey players or baseball players, or both, and the other one will probably be a lawyer, she says. Anyway, that is an example of how our people used to participate, from the smallest child to the elder of the community. Our form of democracy at that time was that every person had a significant role to play, even the children, and we were busy every day. There was no such thing as 9 to 5 or five days a week or fighting to shorten the week, because every day it was a continuance. I am just giving you a crash course.

This is only a five-year program at the university if you are going to take this, so you are very fortunate to hear this now.

When we did these things, a child went through a process of learning from the very first steps. Each person had, I suppose, some aptitude to be a hunter or a leader or whatever capacity he or she had in that community, and our elders, once they had achieved their level of position in the community where we would call them our teachers, were what we would refer to in our society here today as our professors, our doctorate seniors, in terms of their various professions.

1120

While I do not have the time to explain every detail of this role, we were very active and busy. We would get up in the morning when the sun gets up, with the rest of the environment, and we would take it easy in the afternoon—I do not know what time it was, probably around 2 o'clock, I guess—and sort of rested with everything within that area of our environment, and we began to be active again, say around 5, 6 o'clock. You know, if you ever go out and camp someplace, listen to the environment. You get up in the morning. You will hear all kinds of activity and everything else, and then around 2, 3 o'clock everything is quiet and later on activity begins about 5 o'clock and so on, right up until late evening.

So that continued. There was no boredom to speak of because we were all active, and of course it changes with the seasons, winter and so on.

All of a sudden, we have a group of people coming over from I guess England, France and those places, and they ship through the Hudson's Bay Co, through the St Lawrence and so on, and say, "Hi, guys," and we began to communicate with each other. We had visions of them. We had stories about it in our legends, how certain changes were coming, before the first emergence of the white man.

Anyway, we finally made some communicative contact, and after a while we were taught: "You guys are working too hard. We have this new thing called democracy which you would be very fortunate to experience, to learn. It'll work." So our ancestors said: "I wonder what they're talking about. 'Democracy,' what is that?" They said: "Democracy is like we all sit down together here. Okay, these guys over here, they are my immediate relatives on my mother's side, these guys over here are my relatives on my father's side, and these other guys are my peripheral relatives from both sides. So here is what we're going to do. This is what democracy is called. We are now going to elect a chief." "A chief, what is that? Is that something to eat, or cook? What is it?" "A chief is sort of a head person, and you'll have a council." "What is a council?" "Well, these are the people who would be elected to work for you. Instead of working 365 days a year, all of you, you will appoint somebody for two years to do that for you. You just take it easy."

That is kind of the conceptual direction we were given.

So we have an election, known as democracy. We nominate Uncle Martin, or Ann, or whatever the missionaries decided to use in describing some of us because they could not pronounce our names. They said: "All right,

we'll nominate this one, this one and this one. We'll have an election and everybody votes."

Everybody voted, so finally two people got on the side, and one over here and one over there, which meant that four people out of the whole community were above everybody else now. They are now going to be chief and council, so to speak, and our people said: "What about the rest of us? What are we going to do? What happened to our traditions where we get up early in the morning and all day everybody is preoccupied with common existence?" "No, no. Don't worry about it. This is a new life. This is progress, okay? This is civilization," you know, whatever you want to call it.

So we went through the process, and next thing you know, what happened from that point on—there are more details to this, by the way—was that confusion set in. Our respect for each other in terms of what our roles were all about began to change, and then all these other socioeconomic factors also began to change, so when that happened the whole environment of people who had been patiently transitional from time immemorial till now began a process of change that shook the very foundations of our very survival to the present day. That is why I said there really has to be a recognition of difference, and there is a difference, believe me.

There is much more. I do not have the time I need to explain what I am talking about, so I am just going to go through the basic points. Later on, maybe in some dialogues that we will have across to each other, we can talk about these things.

Essentially, the difference I see in our existence between the way my own people have derived to the present time and the way society came about introducing its form of democracy or way of life—there is a basic difference, as I said. Unless we understand that difference, we cannot really deal with these issues facing our people today. We cannot.

At the same time, I know that each of you came through a process of education that is enshrined in your system. No bloody way can I change your form of thinking, because this is what you are, the same way as I am. So I am not here to change you, not today—maybe tomorrow, the day after and so forth. And the way I present myself here, I am not being facetious; I am being outright and straightforward because we are dealing with a very straightforward situation here.

The basic difference, as I see it—and I incorporate this in the work that I do, and I work very closely with young people, as you see behind me, as well as our elders; those are the very important elements of any work that I do—is that there are four elements. There are four points, which I recognize from my own culture as a very magical number. The Chinese say it is an unlucky number, but on this side of the hemisphere, we say four.

The first one was very crucial to our people and is what I call spiritual existence, a centre of power of individual—in fact, a whole tribe, a whole nation of people—a centre, just like a nucleus of the sun; revolve around the sun. The power of the sun is there. Without the sun, we do not exist, period. Same with the nucleus of an atom. We only get to a minute detail. The nucleus of an atom is what makes the

power of the atom what it is. Ours was a spiritual existence. That was the number one building block, if you will.

The second principle point that is very important is what we call a cultural characteristic of our being, the language, where we are, how we express ourself. That was the second principle of our layer of existence, if you will.

The third one was what we call the social aspect of our fibre in terms of the social interaction, the social buildup of our community, our families and so on.

The last one was what we call economic. The economic was the outer layer of everything that applies once all these other layers have been put in a foundation. That is what made us distinct in a sense of our survival in our own families and communities.

To democracy, or the white way of democracy, we are told—and this is what I see in a lot of things we observe—the number one thing is the almighty dollar, the economic aspect. The almighty dollar is more powerful and more—how shall I say it?—important to a lot of people than Jesus Christ or any other religious figure of any religion, it seems. That is number one.

In comparison, there is the social aspect, of course. You have to socially interact, and what you do in society is number two; and number three is the cultural aspect. After a lot of people saw that program *Roots*, everybody wanted to know where they came from, started shaking family trees and so on and saying, "I want to find out my roots."

And then the last one is religion, spirituality. You do all these terrible things from Monday to Saturday. You go to church, ask for forgiveness for shafting your neighbour and everybody else, and on Monday you start the whole process again.

1130

So that is the distinct, fundamental difference I see between our society and mainstream society, and when you look at that perspective, then you try to analyse what makes it important for a person to coexist here in terms of all these challenges or those problems we were talking about. When you see that, only then will you begin to understand that.

You know, children are fascinating people. We have to learn a lot from them. I travel a lot. Some of my young children are in the back. I was observing my little girl—she is eight years old—making friends with this other girl who was eight years old. A very interesting phenomenon took place. They made contact. They laughed, talked to each other. Next thing you know, they were buddy-buddies in a matter of minutes. They exchanged addresses, and my little girl asks me, "What can I give her?" Because in our tradition, we give gifts in friendship—to give her something. She made friends with this one little girl, and yet I watched around the adult sector and everybody is in their little environment or little space, a "Keep away from my space; I am here; do not come near here" kind of attitude. We have to learn those kinds of things. So that is a reflection of some of the things our people are talking about a lot of times in terms of making contacts.

As I am speaking to you, I am bouncing my conceptual, intellectual dialogue from here. On other times, I am speaking to you from here. So a lot of times when I am

speaking to you from here, you try to see me from here; you cannot get what I am saying. When I am speaking to you from here, you will try to receive it from here, so it all gets mixed up. It is like an FM and AM transmission and receiver, you know; you do not switch on at the right time, right place. So that is what we have to do to understand our differences; we have to understand how to communicate and so on in order to deal with these issues we are talking about.

The second point I would like to make is consultations. In my opinion there is no such thing as actual consultation without implementation of participation. In other words, go back to democracy again. I heard a very interesting observation when our national chief talked to someone from Toronto, I think, in respect to aboriginal self-government. The caller on one of these national programs asked: "Since you want to establish your own form of self-government, would it not be fair if we also sat on your governing body? After all, you want to govern your land and you want to do all kinds of things that will implicate a lot of things, including our own people, white people", and that is outside our activities. He was told, "Well, we cannot invite you to come and sit on our governing council because we do not even sit on yours." The chap said, "At least in ours, we sit in democracy; we elect our people every five years." So he was told: "Well, that is fine; you may be able to do that, but in between, you really have no significant role to play. They butter you up towards the fourth, fifth year and you vote again for whatever party you think is the best, and they will start over the whole process."

I think that is very true, because I wrote to the Prime Minister like everybody else, trying to stress some of the inequities I see in this country. I said, "Mr Prime Minister, have you not done enough damage already?" And at the same time, I said, "The proposals presented to us are all outdated and it is too late. You should have done that a long time ago." When Meech Lake went down, he started all kinds of things in terms of responding to our issues and so forth.

Finally, I said: "In order for me to get my points across to you"—the government—"I have to have at least one of presence or capabilities. I might have to be radical, a militant, and appear that I have the capacity to threaten your safety or the safety of others. You will think about that. You are going to respond to that, if I have that kind of presence before you. Or, preferably, I would like to have maybe \$50 million in my back pocket and begin contributing to the many ridings of this country and to your coffers, and to arm myself with all kinds of lobbyists to make some economic presence in your governing system."

Those are the only two he might be able to understand, and that is why I say here that there is no such thing as consultation. There are consultations in terms of, for example, the \$20-million-plus man named Spicer who is flying all over the place asking questions that we already know are going to be answered. That could be a consultation. But the consultation I speak of, that I believe in, is the implementation aspect of what happens after the consultations begin. This is where I think we have to have more involvement, what you call participatory democracy, of

people. Not every individual. I am talking about the fact that we have different groups in this country that represent individual interests and they are very effectively organized. Everybody has an organization these days, because I suppose everybody has rights. Everybody has rights about everything. We have women's rights, aboriginal rights, you name it; the labour movement and so on. And quite rightly so, because we have some very important concerns we want to express.

So the thing I mentioned is that if there is going to be a sincere process of consultation, you also have to involve the implementation aspect to make sure. Sometimes I feel like Wayne Gretzky. If Wayne Gretzky was asked today, "Why don't you go to Toronto and coach the Toronto Maple Leafs?" and he tried to do that for a year or whatever, he would feel this sense of ability, that maybe he could do a little better than some of them; he wants to be involved in that. That is how we feel, many of us—not only aboriginal people but many Canadians across the country. We want to be involved in the implementation aspect of all these changes that we are talking about in this country.

That leads me to the other aspect, constitutional deliberations. Again, the involvement we talk about from the aboriginal people, our people, is that we must be direct participants in the consultation process of the constitutional deliberations. It has to be more than the Meech Lake process, as we all know. I do not have to rehash it. A phenomenon took place there. It was not right. We told the previous government here over and over again that it was not right and that regardless of the political expediency of certain people, you cannot have that. As a result of that, a lot of our people to this very day are very reluctant and very apprehensive of political parties, especially the major, mainstream political parties.

So we have presentations in different forms in which we describe how we want to be involved. On a national level that was already provided by our national leadership. But this province also has a very significant role to play in the constitutional nation-building, because it is very significant in the political power stage and interactions in this country. Your recommendations will be very crucial as to what is going to happen in the process. That is why I say we have to be reinforced and supported by this group and in fact this government to help us play a significant role in the process.

This leads me to aboriginal rights. What we say, and have been saying for a long time, is that we have to have aboriginal and treaty rights recognized and entrenched in the Constitution. Regimes have to be built to support these functions so that they be part of the governing process in this country in which our people play a very major and significant role.

The sixth point to try to explain is the treaties. They must be recognized within the Canadian Constitution as well. Treaties are sacred documents between two nations of people who sit down and recognize each other, that they exist. When my grandfather was listening to the treaty-making days, he saw a Bible placed before him to signify the purity of the discussions and the sacredness of the

dialogue. They also brought the Union Jack to signify the presence of government.

They pointed out the very visible and tangible illustrations with respect to sealing this treaty by saying—you know, you have heard John Wayne movies—"As water flows, this will continue." Now Hydro is trying to dam these waters from flowing. That is just my little fun. "As long as the grass grows, the sun shines," and so on, "that is the duration of the treaties.

"Believe us," they said, "because we have these religious people beside us to tell you our sincerity is pure." In the meantime, our concept over here, as I had mentioned earlier, was based on our inherent collective possession of land. In other words, I could not sell any of you any piece of my land. I cannot. It is almost sacrilegious against all our cultural, spiritual principles to do that. You cannot. It is unthinkable.

1140

So when the treaty came over, we did not speak the language to begin with. We were told, "Give this up." In harmony with everybody else, we will—it is just like friendship, that is what it is. We knew what friendship was, so we equated very well. Anyway, the end result, after we saw all of this, after we began to understand how to speak English, was that we began to realize how severely we had been shafted, to say the least. All these religious institutions that were there were not really there to look after our best interests; they were there to indoctrinate their own Christianity concept in us. I do not have to tell you about the tragic legacy from that, how our people have been completely alienated from their language. We went through a system, a process, that almost eliminated us, along with all the sicknesses and everything else. We almost became extinct. Through the grace of our Great Spirit, through our survival belief, this is what you see before you today: an aboriginal person that is angry a lot of times. I have learned to adjust my temperament, but it has been very trying at times. So I am trying to explain to you, ladies and gentlemen, some of these basic fundamentals.

The inherent rights we talk about are simply what we used to do to be recognized today. I also say aboriginal sovereignty has to be recognized. What does that mean? Does that mean economic sovereignty, as Quebec is talking about, or does it mean a different country within a country? I think that is the most difficult description to understand. I do not think it means those things in that context. I think it means cultural sovereignty, the self-determination sovereignty in terms of what you do here in your community, recognizing of course that there are certain laws that are there now, and if these laws are bad, why not change them to accommodate these local situations?

We talk about aboriginal governments. You talk about self-government. I work in that area with my own people. I do not call it self-government; I do not call it any other cliché. It is simply a group of people managing its community as best suited to its own purpose. If you want to put a name to it, those are aboriginal governments, first nations governments.

We also talk about nation-to-nation relations. That is not very strange. It is a process that began way back when

we first took the hands of the first people who came, showing them places to live and so on. We related to each other, we related to the flag, to the Bible that was presented to us in terms of a visible, tangible kind of connection in our dialogue. So all these things that we talk about are there and they are very real.

We also have to recognize that there is inequity of almost everything that exists between the poor—that includes our people—and those people who are more fortunate than a lot of us. There has to be some inventory taken. There have to be discussions, they have to be planning together, there has to be community-based recognition of our people and what we are trying to do.

The other thing I also wanted to stress again here, and it follows from some of my earlier presentations, is the fallacy of the two founding nations. I say to you, ladies and gentlemen, that we were here. There is no question of that fact. That is indisputable. The only thing that is not clear is how we got over here. Just to be humorous, sometimes I say we got here by skating over and back to Asia—just to be humorous, because our people are generally humorous no matter how tragic some of our situations may be. So that is why we have to say that.

So self-government, aboriginal government, must be community-based participation of people doing their thing. Nation-building must include our own people as key players in the process. The Canada clause, in our opinion, must also recognize the distinct group of people with decision-making roles. I am talking about aboriginal people.

I will briefly summarize to item 19. In the all-inclusive participation of our people, we are going through a process of what I call our economic and political empowerment. The phenomenon has taken off by leaps and bounds throughout this country, more than you can ever imagine right now. You will be privileged to witness that process and you will find that many elements will come from there, more radical than me, more radical than the organizations that dialogue with you, but hopefully through a combination of efforts, something positive will take place in the process of these changes that I am indicating to you.

Bilingualism and multiculturalism are real, although they are shaking the hell out of the foundation of our social fabric in this country. For example, if you look at the population of this country, a third of the people of this country are neither French nor English. That is a very significant development and that is increasing.

Participatory democracy must include a constituent assembly and a national referendum on major issues.

I cannot begin to describe each detail of these. As I said earlier, these are more or less motherhood statements. Now I go to my recommendations.

We ask that our people be recognized as a distinct group with fundamental rights for aboriginal government in the Constitution. There has to be a framework established.

Aboriginal rights must include pre-Confederation treaties including the point of reference of the royal proclamation of 1763 as a basis of all treaties that have been made previously and in the future.

Inherent rights of aboriginal people must be entrenched in the Constitution.

Aboriginal sovereignty rights must be further enshrined in the Constitution.

Ontario must provide resourcing for self-determination initiatives and directional plans for both off-reserve and on-reserve people who are pursuing their socioeconomic aboriginal self-government areas, espoused and mentioned in the policy of this government when it says it recognizes aboriginal rights and inherent rights.

We believe in a strong national government to be involved in decentralized jurisdictions appropriate to a lot of positive things that could happen in each province and territory in respect to our own input as aboriginal people.

A constituent assembly, as I indicated, should be incorporated and established to accommodate community-based participation. This is the nearest form, I guess, of what I called for earlier when I said the implementation aspect of consultation is most crucial if it is going to mean anything. So the constituent assembly process is a thing to be recognized.

To paraphrase these other recommendations, I even dare to suggest to you that you should have an aboriginal person sitting here as an ex officio member so that you will have sort of an in-house aboriginal person to dialogue with, to point you in some of these directions I am talking about.

I ask that our people should also be recognized as the first founding nation of this country. Maybe you can say English is second, or French. You guys fight that one out, but we want to put that in there, to be recognized.

I also ask you to look at my previous recommendations. I made two very significant presentations here in February. Go over them. I believe they have something to say in terms of continuity and continuation of these deliberations.

We have to be involved, as I have said over and over again in these recommendations that you see before you. Without going into any great detail, they are saying we have to be direct participants. We have to be involved in the process of these deliberations here as well as across the country. So these are the points of my presentation.

Believe me when I say there is a difference. There is a difference; there is no question. So when we talk about the directions, look at those 130 questions. I cannot even begin to scratch the surface of one of them, let alone try to conceptualize what direction we should go. I have this Wayne Gretzky feeling that I would like to help. I know what it is I am talking about. I have lived with my own people. I have dialogued with my elders and the young people, the young kids. We know what we want. So I hope I was able to bring that point across to you.

If you have any questions on anything I may have suggested, please feel free to ask me. If you want to know further what I am talking about—there is much more detail than I can explain here on those points that I mentioned earlier—please contact me and I will be very happy to talk to you. If I can convert one of you, maybe that is a beginning in terms of some of these things I am talking about.

1150

The Vice-Chair: We have had that opportunity in the riding, Mr Rickard.

First of all, one thing is that the committee asked people to respond to a number of other issues, other than just

aboriginal issues, for the very reasons that you are talking about. We think the issues facing us today with regard to our Constitution transcend just cultural issues, because economic issues and cultural issues in some ways are very intertwined.

Mr Winninger: In case it was not perfectly clear, that original date of June 27 for the final report had to be delayed, simply because the groups that were coming to us to make presentations were asking for more time to be heard and we needed more time to deliberate on these important questions.

I have a question arising out of a comment you make on page 8 of your presentation. It regards the federal jurisdiction over aboriginal matters. There you suggest, "Federal trust and fiduciary obligation to aboriginal people must be recognized and kept while provincial and territorial government resources must be made available to supplement...socioeconomic initiatives." My question to you is this: I can understand and acknowledge the concern that the federal fiduciary responsibility remain in place until your sovereignty is enhanced as native people, until you have an adequate land base, until you have an adequate economic infrastructure to gain the measure of independence and autonomy you are seeking. Might it be fair to say, then, that perhaps the federal role will diminish?

Mr Rickard: Any country, any free-society country if you want to call it that, has a basic constitution from which to govern that particular country. In some countries you have provincial or state structures within that national government structure. In our case, we dealt with the national structure when we began our treaties. The constitutional reference of 91(24), for example, refers to Indians and lands belonging to Indians as a jurisdiction of the federal government. They were the custodians. My great-grandmother used to talk about Queen Victoria as the custodian of our treaty. We both know that is sort of a fantasy in many respects in the political realities of this country.

However, you will find that every aboriginal leader in this country will tell you we want to maintain the federal linkage in terms of the jurisdiction aspect of first nations. The reason for that is that we have legitimate relationships. The Indian Act, imperfect as it may be, is a document that connects us with the federal government. It is almost like a paradox. It is a document that we cannot stand, yet it is the only tangible document that connects us constitutionally and legislatively with the federal government. So that is our connection. We want to retain those things. Maybe we are masochists or whatever, but that is the connection we have.

In respect to the province, we are involved in this province, for example, and believe it or not, we pay a lot of taxes, contrary to what you might hear. Fifty per cent of us live off-reserve and pay taxes. I pay poverty taxes, education tax and so on, like anybody else. I have no special privileges or benefits.

I feel the province has to be involved in the socioeconomic support systems of people, our own people as well. The government espoused aboriginal rights and inherent rights in this province. That is fine. You can talk about a recognition of almost anything in this province, but without

the practical policies and financial resourcing systems, they do not really mean anything.

So in effect we want to keep the federal aspect because we want to opt in to Confederation. That is what we have been trying to do. We are not even part of Confederation today, other than administrative reference under Indian and Northern Affairs.

So we say we want to be part of the Constitution and Confederation. We want the federal government to adhere to its trusts obligations, because it has treaties that it has yet to fulfil. You cannot just escape that and say, "We'll do it with their special relations to us," and vice versa.

Mrs Y. O'Neill: It is good to see you again, Mr Rickard. You are definitely a thinker. You are an honest thinker.

I guess when I think of those 130 questions that you talked to, I get a little overpowered as well, more than a little overpowered. I guess I thought that when I began on February 4, that this task was maybe beyond us. But we are the people who are here. You are in your leadership role, we are in ours, and we know the issue has to be dealt with. So however—what should I say?—overpowered, overwhelmed and at times confused we may feel, I think we have to continue to relate to each other, as I think is your belief.

I find your brief is extremely full, as your other presentations were, and I am not going to comment or ask you to mention about your recommendation 9, about a further ongoing structure that would carry on the work of this committee. We may be here longer than we think, because we have had a major—almost six-month—extension even at this very early stage. When federal documents start to be presented, our mandate may be renewed. It is not unheard of around this place that some committees, particularly select committees, sit for the entire length of a government. That may happen; it may not.

What I would like to ask you to comment on is—I do not know what you title these points that numbered into 21—number 18. You said, "Our off-reserve status and treaty people are not properly represented." I have just returned from the Maritimes and, as you likely know better than I, the negotiations that are going on there regarding a designated seat in both of those legislatures. I presume the talks, particularly in Nova Scotia, seem to be advancing with the Micmacs. Could you say a little bit about what you mean by this in Ontario, or what ideas you have about how this could happen better? I only use the Maritimes experience because that is the only one I know of that is going on right at the moment.

Mr Rickard: This government has inherited a process of relationship with the aboriginal people in this province. There are only so many aboriginal people in this province, yet the formal relationship that Ontario had with aboriginal people in this province has not changed significantly to any degree in terms of addressing the realities facing us.

For example, I live away from my community by virtue of not having employment opportunities, accommodation or any other opportunity from my community. The only choice I had was welfare support systems, in which it is not possible to progress under any circumstance. So by

choice I had to move away. Many others out of over 130 communities in this province have done and are still doing that today.

Our numbers indicate over 50% of us live away, and we work, we go to school, we even have our own long-term mortgages of our homes. We pay taxes and we are going to tell you one of these days how much tax we pay. We are presenting these to the various ministers of this government. They are a very reluctant environment right now, but we are going to make it, because an idea has come to address something that has not been adequately represented for a long time. We work together with our chiefs and councils, our tribal councils and our status organizations. When I say status organizations I am talking about the reserve-based organizations, all the way up to the Assembly of First Nations. We have no quarrel with that.

1200

On the other side, we also have people who claim to represent all of us who live off our reserves, which is not true, and the government is continuously providing substantive financial contributions to these various groups. We feel it almost borders on misappropriation of funds and fraud to continue financing some of these operations.

We have the recourse to take these to court as being violated under our Charter of Rights, but we are just assembling our information right now, what you call intelligence-gathering of information. Sooner or later, and it is going to be sooner, we will be making presentations again and again to this government to respond to these things. It is a dicey situation, no question. However, governments are known to face dicey situations. That is why you are elected, right?

I believe what has to happen is that our reserve-based organizations are clearly, concisely stating what they want to do. We agree with that. We off the reserves also are saying the same thing. We are now working together with our own communities. Any other organizations that exist out there, fine, let them come out and express what it is they are doing and so on. I am sure everybody has a legitimate base from which to operate. All we ask is that everybody participate in explaining what they want to do towards whatever objective and what end in that respect. We have that dilemma we have to deal with.

I do not want to do all my laundry in front of you. I have a tendency to make that a private matter, but you will hear periodically of what I am talking about, and especially our member of the Legislature will also put in work. As a training ground for cabinet ministers, I do not know if he is going to be around much longer, but we will see what happens.

Mr Curling: We were wondering that too.

Mrs Y. O'Neill: Thank you for explaining that point more fully to me.

The Vice-Chair: We have another question from Mrs Mathysen. Seeing that we started about 10 minutes late, there is about another five minutes in your presentation. So we will go to your question and a final summary after that.

Mrs Mathysen: We have heard a number of times that native self-determination and native self-government are dependent upon a sufficient land base for aboriginal

people. As an urban Indian, perhaps you could answer my question. I have been concerned about the urban native who has been cut off from his reserve, from his home, for two or three generations. If that land base were there, would you return to the reserve? How many other urban Indians do you see returning? Is this a problem, bringing those people back, or would they want to return?

Mr Rickard: The situation is rather complex, to say the least. When you explain that, it takes a long time to—as I mentioned earlier, I have to draw diagrams and illustrations. Again, that is not to be facetious and to appear like I know everything. I do not really. I am going through a process of some change like everybody else.

What happens is that I live away from my community, by choice or by circumstance. I think it is by circumstance, because there are no jobs there. I now live outside and I feel comfortable and I look at my line of work as sort of a shuttle diplomat in terms of explaining to white society what our people want in relation to what they have expressed. I also try explaining to my people what all these crazy white people are doing in their government and their institutions. I just try to balance understanding. Then from there I probably will pursue it as work for as long as I can do it. It is my line of speciality. I call myself a consultant or a mercenary, but after I saw the description of "mercenary" in the dictionary, I dropped it. It said "do anything for money." There is a limit to that.

What happens is that when we look to our communities' land base—my place is Moose Factory. That is where I come from. We have a base there. We do not have enough land base to really be comfortable. We are all cramped in together so close that we cannot even breathe. In that sense, our people need more land base in that area to establish their own institutions to manage their affairs there, within that area. But as far as I am concerned, where I live I do not need to be granted a land base because we are buying our land back, some of us. We are getting tired of waiting for land claims to be settled so we are buying our land back and living out there, demonstrating what we are talking in the sense that we are capable of our own self-determination.

My wife has gone through her own educational process. She is getting her doctorate in education next month. After a long series of studying, she has about four or five degrees. I am very privileged to witness that phenomenon. I also have what I guess you might call a university degree as well. Those are things we are using to demonstrate our advancement in every aspect, to try to be role models to our children, to young students surviving out there who say, "Look, we have to use the same checks and balances to survive out here." However, there are legitimacies, like treaties my grandfather signed, that have to be corrected somehow or updated through his understanding.

I am not asking for any land base in Timmins or any place I come from. If I want to run against this guy in another party, I will. I have that privilege. Maybe we will have another standing committee after the next election which I will be chairing—I do not know—depending on what party wins.

I am just giving you an illustration because I am trying to demonstrate that anybody—a lot of us are—can do anything he wants to do in any capacity, be it members of Parliament, MPPs, municipalities, anything. Hockey players, baseball players—you name it, we can achieve those.

That is why we are doing it, in many cases, in urban centres. A lot of our people are doctors now, lawyers and so on, who are working. There are no jobs for us in our community but we go home regularly. It is still our roots. I do that a lot. Those are the things that are coming out.

When our people on the reserve communities and our organizations are saying that we want more land base, this is precisely what they want, for that community, not for us to set up our own self-government within Metro or Timmins, Sudbury, Thunder Bay, but to be part of a process to enhance and participate in discussions as to what constitutional principles should be entrenched in the Constitution. We want to be part of that, and we are. That is what I am trying to do here.

We also want to be part of the economic business development programs because we pay taxes to all these programs as well. When we see a program come up and we know it is not right, it is not properly administered for some reason, then we feel, if anything, as taxpayers or aboriginal people we have a say as to what should happen. That is why we are overly concerned about that as well.

Mrs Mathysen: I think you have clarified that for me.

The Vice-Chair: We will allow you a couple of minutes to sum up any final message or comment you want to give at this point.

Mr Rickard: I just want to close by saying I hope I was able to provoke some thinking. Your computer is located between your two ears. I say that to describe how I am trying to penetrate and present some of the points I think are very crucial to aboriginal people.

Second, I also want to make it absolutely clear that when you look at me I am not just an aboriginal person maybe just thinking of aboriginal concerns. There are many peripheral points out there that have to be considered, from the economy, taxation, regional disparity, you name it.

Third, I hope we can participate in the implementation strategies I talked about. If any of you require advice in that respect, you will be given specific advice. Based on economics, law or whatever, we can provide it.

[Remarks in Cree]

Thank you very much and I appreciate your listening to me.

The Vice-Chair: The committee will be coming back at 2 o'clock this afternoon to hear from other presenters. Until then, we stand adjourned.

The committee recessed at 1210.

AFTERNOON SITTING

The committee resumed at 1505.

NATIONAL ACTION COMMITTEE
ON THE STATUS OF WOMEN

The Vice-Chair: The committee will now come to order. Next on our agenda is the National Action Committee on the Status of Women. Representing them is Barbara Cameron, who was the co-chair of the constitutional committee for that organization. Just a word to the members before we get started: After the committee hearing we are going to be circulating some documents you should go through in regard to the various reports, and we will get those out to you just after we have finished our hearings.

Dr Cameron: I thought what I would do is address some of the questions raised in the material I was sent, and then have questions from people. The whole process of developing a position on the Constitution has been quite difficult for the National Action Committee on the Status of Women. We are a Canada-wide organization and we had very major divisions between the women of Quebec and the women of English Canada and all sorts of other groups around the Constitution. We rejected the Meech Lake accord a year ago. Our position was acceptance of the five demands of Quebec, but rejection of the Meech Lake accord because of its extension of the same powers to all the provincial governments that the Quebec government had asked for.

This year at the annual general meeting of NAC, which took place in June, there was quite a comprehensive position adopted and it is a position that is fairly radical, but it seems to us to be one which allows us to reconcile all the different interests within the organization. This is a position which recognizes the fundamental units of the country, for the purpose of the Constitution, as national units essentially, with recognition of the right of self-determination for Quebec, the aboriginal peoples and English-speaking Canada.

It basically sees Canada as a multinational state, and within that the aspirations of different racial groups, ethnic groups, cultural groups can be realized, but in a way that does not counterpoise, for example, multiculturalism to Quebec as a distinct society. So we would see English-speaking society as a multicultural society as well as Quebec. That was certainly the way the Quebec women's organizations see their society, but they were not prepared to have multiculturalism and the distinct society of Quebec put in some kind of a competing position.

We also took a position on the process by which we believe constitutional change should come about. We want to see the country as a voluntary relationship among English Canada, Quebec and the aboriginal peoples. We think it is essential for each of these components to come up with its perspective on how it wishes to be organized politically, and then to negotiate. It was our sense that the aboriginal peoples and the Quebec people had actually quite a bit more discussion about this than English Canadians had, certainly English Canadian women. Because of that, we have called for a constituent assembly for English Canada.

We are not calling for a constituent assembly at this point for the whole country, but we believe it is essential for English-speaking Canadians to come up with a perspective, particularly on how we see the proper powers of the federal government and the provincial governments.

I should say that our position comes out of an experience where the Quebec women's organizations had a profoundly different view of the role of the federal government than the women's organizations in English-speaking Canada. The Quebec women, whether they support independence or not—and the major women's organization in Quebec does support Quebec sovereignty—see the Quebec government essentially as their national government. The women in English Canada see the federal government as the national government for them. There is very strong opposition among women in English Canada, who are working for women's equality, to a decentralization of powers, to a provincialization of powers. There is a strong commitment to a continuing role for the central government, the federal government, particularly in social programs, but it comes out of a notion that this is the common government, at least of English Canada.

In addition to our position on the process, we passed a resolution endorsing a strong central government for English Canada with respect to social services, cultural programs, protection of equality rights and also linguistic rights. One of the concerns of francophone women outside Quebec is that there is an assault on their rights. There is a very strong concern that if cultural rights were given to the provinces, then they would lose their rights. We see this as a responsibility for the central government. That is the position we have taken. There was very strong support for it at the meeting of the National Action Committee in June.

We think, on the basis of that, women will become more active in the constitutional debate. The National Action Committee was essentially paralysed over the last year or so. We were talking a lot about process and the need for women to be involved, but yet had not actually come up with what we wanted to say when we were consulted, so the experience with Spicer and a number of the commissions was that women's organizations were not that active. I think that will change when the federal government comes out in the fall with its proposals. I should say, on that, I think the record in Ontario of your committee is better than the rest of the country from what I have heard. The outreach done to women's organizations did result in more representations than in some of the other provinces. The participation of women in Spicer, apparently, was very minimal and the NAC did not participate in Spicer.

With that, I would like to go through some of the topics you have indicated on the material I was sent by Harold Brown. I would like to say to begin with that we consider the division of powers to be fundamentally important to women. We do not think the only concern, or even the major concern, for women is the Charter of Rights and Freedoms. Particularly with respect to all the issues around spending power, the division of powers is vitally important

to women because of the dependence many women have and the support they give to social services. We see the necessity not only of defending the existing level of social services in the country but we want to see it extended. The National Action Committee has called for some time for a Canada-wide, universal system of child care. We want an extension of the role of government.

One of the things that concerns us today, in the debates about the division of powers, is that some of the more right-wing interests in society that want to see cuts to social services have now got into the constitutional debate in favour of decentralizing powers to the provinces. They see this decentralization as a route to cutting social services.

It is interesting to read, for example, the Group of 22's proposals. They define social services as somehow inherently local, but the issues of great concern to business will be left up to a central state. Their proposals are not completely decentralizing. On things like telecommunications that are very important, they want to ensure that there is no confusion and that those will be central. Even with something like education, I think the phrase is that if it is related to competitiveness, they want that to be federal. When it comes to issues we are vitally concerned with, they are defined as local, but the issues for international competitiveness of business are defined as of great national concern.

We reject that. We are very concerned about what we see as an unholy alliance between some of the nationalists in Quebec who do not go as far as arguing independence who are making proposals around decentralization, because that is the way they can gain more powers for Quebec. They are making an alliance with right-wing interests in English Canada that want to see a cutback in social services. These tend to be the same people who have supported the integration of the Canadian economy into the American economy. We do not support that.

Just on the general question of the role of government, the division of powers has become tied up with the issue of what is the role of government. We strongly support an extended role for government in social services, but as I said there are differences between the women of Quebec and the women of the rest of the country about where this power, particularly over social services, should lie. We want a continuing and extended role for the federal government in English Canada, and support the position of the Quebec women's organizations that the Quebec government should have more power with respect to the people of Quebec.

Essentially, our position is that the existing Constitution is based on a false equation which equates the Quebec government, which in many respects is a national government, with nine governments that represent parts of another national community. We think the issue of the power of the Quebec government has to be delinked from the issue of the power of the other provincial governments. We do not think we are talking about the same thing with these questions.

One of the things I thought was interesting about the Spicer commission—and this is probably reflected in your report to some extent—was the strong desire among English

Canadians for a strong, central government. That was one of the strong themes that came out of Spicer.

With respect to the role of Quebec, we think language like "special status" and "asymmetrical federalism" does not quite get at what we are talking about, that it is important for there to be a process by which English-speaking Canadians decide what role they want for the federal government and for the provincial governments, irrespective of what Quebec wants. That is why we are calling for a constituent assembly.

When it is posed in terms of giving Quebec more, or something different, you get a very strong reaction against that in English Canada, but if you start talking about what it is we in fact want, you realize what happened within the National Action Committee, that we want different things, that English-speaking Canadians want a strong central government, and we have not begun to have the debate about the division of powers in that kind of context without the issue of Quebec always having precedence.

Obviously, an implication of our position is we reject the principle of provincial equality. This is a relatively new principle in Canadian constitutional history and we do not think it is particularly useful. I think a strong argument can be made that the principle of provincial equality works against the principle of women's equality with respect to social programs and in a number of other ways.

Basically, on the issue of division of powers, we respect the right of the Quebec people to decide how they wish to be organized. We want the forums for the debate to take place in English-speaking Canada about the way we wish to be organized. The position that will be taken in such a debate is that the federal government has to retain very strong powers in major areas, over economic policy, culture, social services, protection of rights and liberties.

With respect to aboriginal peoples, we are quite pleased about the process Joe Clark has agreed to with the first nations, which involves them having their own process, their own set of constituent assemblies. Coming up with their proposals is quite consistent with what we have recommended. It seems that what is missing at this stage is for there to be some forum for Canada, outside of Quebec and other than the native peoples, to come up with our positions.

1520

I would like to make some comments as well on the issue of representation, which in your material focuses mainly on the issues of national institutions and the political system. The National Action Committee presented a brief to this committee in June 1990. I do not know how many of the people here are the same. Basically, we argued that the debate around political representation is very outdated, that we talk about the Senate and we talk about territorial representation. In this day and age, we need to be talking a lot more about the representation of women and about the representation of various racial, ethnic and linguistic minorities. It is not sufficient to frame our debates on representation simply in terms of territory, in terms of what was relevant in 1867.

We think that as the debate develops, particularly in English Canada, there is going to be less and less sympathy for restricting it simply to better representation for the provinces;

there are many other interests. The National Action Committee favours affirmative action measures in political representation.

With respect to whether the Senate should exist or not, we think it is premature to talk about that. We reject the notion of provincial equality in Senate representation, but we think there have to be ways to make our federal institutions more representative of the different sections of the country.

There has been some debate within the National Action Committee on the issue of proportional representation. I think there probably would be quite widespread support for that when it comes to a vote within the organization, but we have not actually had it.

With respect to the Charter of Rights and Freedoms, a point I would like to make is that the debate is not as simple for women as is sometimes presented. There is a major division between women in Quebec and those in English Canada over the charter. The identification of the charter as a major victory in the 1981 round of constitutional negotiations is an English Canadian victory. It is not seen that way in Quebec, where they tend to identify that whole round with the defeat of Quebec's aspirations. We found, over Meech Lake, that we could not get agreement with the Quebec women's organizations about protecting, particularly, section 15 of the Charter of Rights and Freedoms. If there is a sense that this is a unifying charter between Quebec and English Canada, it is not our experience within the National Action Committee. In fact, it has been the source of some division and difficulty for us.

In general, women in English-speaking Canada would favour removing the "notwithstanding" clause. You would not get agreement from Quebec women on that question. NAC would have difficulty taking that position unless we said the Charter of Rights and Freedoms was for English-speaking Canada and not for Quebec. There is a tendency for Quebec women to look to their own bill of rights for their protection, rather than to the Charter of Rights and Freedoms.

I would also like to make some comments about the proposals Premier Rae has made around entrenching social and economic rights in the Constitution. As I understand that position, it is being put forward as an alternative to really coming to grips with the division of powers. In the speech to the Legislature, as I read it, it was presented as a way that would make possible more decentralization of powers in English Canada, that would entrench national standards essentially and go a bit farther in the Charter of Rights and Freedoms.

In general, the National Action Committee agrees in principle with the idea of entrenching economic and social rights, but we strongly disagree that this can be seen as an alternative to coming to grips with what are the fundamental questions of the Constitution. We oppose the decentralization of powers in English Canada even with the entrenchment of economic and social rights.

We would like to emphasize that there are real problems in making the constitutionalization of these rights mean anything. One of the proposals that has come forward, from the Group of 22 for example, is to put the criteria in the Canada Health Act into the Constitution, to

give it the same kind of status as the equalization provisions in section 36 of the charter.

Those provisions are almost meaningless as anything that can actually be enforced, and we very much fear a debate which makes Canadians feel they are actually going to have economic and social rights simply by entrenching them in the Constitution, while allowing decentralization, with the federal government giving up its funding role, which is where it can actually influence national standards, and having entrenched rights which mean very little.

As a general principle, we are totally opposed right now to the provincial government's strategy in taking the position that we do not have to worry about the division of powers; that what we will go for is an entrenched charter of economic and social rights.

I can say from our experience with this federal government that anything it would agree to with respect to national standards would not mean very much. Our experience with child care, for example, is that it is quite opposed to national standards. This is something that worries us a lot.

I have said with respect to the process that we support a constituent assembly for English-speaking Canada. I want to emphasize what I think is a very real problem, and that is that I do not think most Canadians look at the Constitution as a deal among provincial premiers. But that is what our Constitution is. That is what it was in 1867. That is what the Meech Lake accord was. Most Canadians, particularly in English Canada now that people have started to think about the Constitution in a more popular way, do not consider that there is a legitimacy of provincial premiers sitting down and negotiating. That was a big lesson of the Meech Lake accord. The only people who seem to see the Constitution as a deal among provinces are provincial politicians. The people of Quebec see it as an agreement between French Canada and English Canada. Most people in English Canada were quite astounded, I think, at the Meech Lake process, because when they thought of it, that was not what a Constitution should be. So we have a major problem of legitimacy, which I am sure you all recognize.

There is also a big problem with the existing amending formula, obviously, because it takes the agreement of provinces to amend the Constitution. Our general perspective on a constituent assembly is that we want a popularly elected one. We have to have more discussion about how that can relate to the existing amending formula in the Constitution, and we want an elected assembly that has some formula for guaranteed representation of women and the various minorities including economically disadvantaged minorities. We have a position in principle on that, but we have not worked out all the details.

On the question of a Canada clause, which is raised in your report, it would be really nice to have a Constitution which had a nice preamble. We have a terrible preamble in our Constitution. A preamble which presented sexual equality as a goal would also be something we would support.

We think it would be false advertising to describe sexual equality as a fundamental characteristic of Canada. The National Action Committee would not need to exist if it were a fundamental characteristic of Canada. We want

some preamble that sets out the goals which we think are in fact goals of most Canadians: social equality, sexual equality and racial and other kinds of equality.

1530

This presumes that we have an agreement between English Canada, Quebec and the aboriginal peoples. A Canada clause would have to be written in such a way that it recognized the basic national components of the country and put the rights of ethnic and cultural minorities in that context. We would strongly support that, seeing Quebec and English-speaking Canada as pluralistic societies.

As a final point on the issue of linguistic rights of minorities, I just want to emphasize the feeling within our organization for the francophone minority who feel extremely threatened right now, particularly with the rise of the Reform Party and discussions about provincializing cultural and language rights. Those are my opening comments.

The Vice-Chair: It was a well-put-together presentation.

Mr Martin: It was a challenging presentation. I found some interesting thoughts. Just one question: When you talk about the Charter of Rights and Freedoms and women from Quebec being concerned about their own bill of rights, what are the fundamental differences in those two documents or sets of rights?

Dr Cameron: I am not familiar with the provisions of it. From what I am told, it goes farther in terms of some social and economic rights in the charter. I think the attitude, though, has to do more with their view of their government than whether they have a better bill. They say their bill of rights is better than the Charter of Rights and Freedoms, but it has to do with their view of which level of government ought to have responsibility for it. I cannot tell you what makes it better or why they say it is better.

Mr Martin: And that is where the "notwithstanding" clause becomes a problem, in that particular place where the two bills of rights differ?

Dr Cameron: No, the "notwithstanding" clause was an issue within the National Action Committee because section 15 of the charter, to which the "notwithstanding" clause applies, bans discrimination based on national origin. The argument of the Quebec women was that because there is preferential treatment in Quebec—as a result of history and also it is in the charter—for English people who come to Quebec from other places in Canada, and who can send their kids to English-language schools while new immigrants cannot, they fear that any legislation that says new immigrants should send their children to French-language schools could be challenged as discrimination based on national origin.

That was their argument, and all the Quebec women supported it. You can give another interpretation to the charter, and other people have, saying that it would not happen, but that was their feeling, and so they did not want the Quebec government to be unable to use the "notwithstanding" clause and apply it to that section of the charter.

Mrs Y. O'Neill: You certainly have simplified some difficult issues for us and you obviously have a very national outlook, and we appreciate that. You obviously have

spoken a lot to women in Quebec or to their representatives, and that is very helpful to us.

I just want to bring one question to your attention and ask if you could say as much as possible about it. What mechanisms can ensure the meaningful involvement of women in the process of constitutional change? You have begun to use some of them. You certainly have talked very fully about a constituent assembly, but no matter what constituent assembly we have in this country, it is likely the numbers would be less than 250 in the final assembly. Could you tell us a little bit about what you see that we as a provincial legislative committee could recommend for meaningful involvement, what kinds of things? The native women this morning were able to bring some explicit recommendations to our attention. Perhaps you could do the same.

Dr Cameron: One of the proposals that was made by the Ontario Women's Action Coalition, which I have worked with a bit around the Constitution, was to have resources from the provincial government to allow local organizations to actually do some education around the Constitution. Our experience with it has been that the Constitution is very inaccessible to people. We do not have a Constitution that is easy to understand. There is a desire on the part of women, we find, to know more about it and to be able to be involved in the debate, but they need resources to be able to be involved in it.

I think one thing this committee could recommend would be some funding for grass-roots organizations, not just of women but within various constituencies, to have some materials that were available to them and to encourage different exchanges, to have some discussions on the Constitution. It would be nice to have exchanges with women's organizations in Quebec or with aboriginal women's organizations. I think that would be very helpful.

Any notion of a constituent assembly requires a process leading up to it of quite a bit of public debate and discussion, and it needs to be made accessible to grass-roots individuals. I think the interest is there. That is our experience in the women's movement, that it is very hard for people to get the information they need so they can participate intelligently in the debate.

Mrs Y. O'Neill: Do you have a regular relationship or ongoing communication with our women's directorate in the province or with the Ontario Advisory Council on Women's Issues?

Dr Cameron: No, the Ontario Women's Action Coalition, which is a recent organization, is the equivalent at the provincial level of the National Action Committee, so they would have that.

Mrs Y. O'Neill: They have sent us some things.

Dr Cameron: One of the things that has been happening within that, which is healthy, is trying to separate Ontario from the Canadian organization. People outside Ontario resent this. Ontario did not have its own organization, so that has been formed recently and they would have that relationship.

Mrs Y. O'Neill: I am pleased you recognize that we have tried to reach out to women. As you say, sometimes they are not as highly organized as some of the other

groups, but we did certainly make a commitment in that first phase that we would continue to involve women meaningfully. We certainly hope women will be very well represented at our conference to be held in October—all kinds of women—because we really think it is important to have a true mirror of the province.

I thank you for working as you are with these complex issues and bringing them to the committee.

1540

Mr Drainville: I must say I am intrigued to hear your comments reflecting the discussions you have had with women from Quebec. I was born in Quebec and come from Quebec. When you made your comments about the Group of 22 and were talking specifically about the economic policies that are presently being engaged on the national scene, saying that the business questions were national concerns but social questions were more local concerns, you talked a little bit about the Group of 22 in that light. Is there any kind of document or analysis that the NAC has done on the Group of 22 report, or do your reflections come from the discussions you have been part of as you have looked at that report?

Dr Cameron: The Group of 22 report came out just before our convention in June, so we had a certain amount of discussion about it, but we do not have a paper. We are preparing a bunch of fact sheets on the Constitution and a booklet on the issue of division of powers and proposals that have come from the Business Council on National Issues. Coopers and Lybrand has done something on decentralization and the Group of 22 will be addressed in that, and the objections the National Action Committee has to that. That should be ready in the fall.

Mr Drainville: It would be good to receive it. If you could make that available to the committee, it would be wonderful to have.

In terms of the constituent assembly, I must say this is a most vexing problem because across the country there is really a great deal of division as to whether such a thing should happen. In terms of the constituent assembly, my understanding—I am just trying to make sure I understand where you are coming from on this—is that you seem to believe that if we do this for English Canada, the reason for doing it, and I am going by implication here, is that we have not had the time, or perhaps the opportunity, to be able to formulate in English Canada responses towards the Constitution and towards visioning the future of Canada, and that therefore this would provide us with an opportunity to do that. My understanding, although you did not say this specifically, is that in contrast there is a much greater sense in Quebec of the direction they are going in and their sense of these constitutional issues.

Dr Cameron: The Fédération des femmes du Québec, which is the main coalition of women's organizations in Quebec, has called for a constituent assembly for Quebec. The National Action Committee, even though it has Quebec organizations, would not be able to take a position about what the Quebec women ought to do. That is part of the reality of NAC. So we did not take a position that Quebec ought to have a constituent assembly; we took a

position that there should be a constituent assembly in English Canada and some of the Quebec women said they would not vote on it because that was not an issue for them.

At one level it is practical: Quebec will not come to an all-Canada constituent assembly. There is no way. So any proposals for a constituent assembly that would be all-Canada will not fly. They are just not going to come. But I think at a more profound level there is a problem in that English Canadians have very few common institutions. I think what has happened often is that we treat our Canada-wide institutions as our institutions. Quebec objects to that. That is one reason many organizations were paralysed.

For example, labour organizations have not taken positions on the Constitution because their Quebec organizations do not want them to, so there is great frustration among English Canadians that there is no way we can get together to take positions. The only common institution we really had was the English CBC. The National Action Committee is not an organization of English Canadian women. We had great difficulty providing a forum for the women of English Canada to have a place to talk about the Constitution, but there was no other place except this Canada-wide organization.

It is the same with our federal institutions, so our problem is that we do not have anywhere we come together to actually decide what it is we want. Our experience, and I think this is reflected in Spicer, is that there is a kind of distinct society in English Canada. There are obviously regional differences, but on some basic issues, basic values, there is a desire to have common institutions. The constituent assembly is a way to provide something that we do not have any other way of—we do not have any other institution.

Mr Drainville: Would it be fair to say, therefore, that out of the experience you have had on the National Action Committee, the need for a constituent assembly has become so clear because of the divisions and the incapacities of French Canadian women and English Canadian women to come together and deal with these national issues? Would it be fair to say that?

Dr Cameron: No, I think what came out of the NAC experience was a recognition that we have very different approaches in Quebec and English Canada and that English Canadian women do share a perspective. It was at the point at which we recognized that we had different attitudes to the federal government that we began to be able to reach some kind of accommodation. The National Action Committee has had a position in favour of a constituent assembly since 1981, because there was a rejection of executive federalism around the process in 1980-81 as well. What is new is the position that it should be for English Canada. But we rejected the notion of premiers negotiating the Constitution in 1980-81.

Mrs Y. O'Neill: You made a suggestion—it was more than a suggestion—that the constituent assembly that you saw would be popularly elected. Could you tell us any way in which you can see that being done, or have you thought that through?

Dr Cameron: This is a project some of us are working on in August, so if we come up with it we will—

Mrs Y. O'Neill: If you do get some strong recommendations that you think would be useful, that is certainly another thing that anybody who is even thinking of that as an alternative has to come to grips with.

Mr Jordan: Thank you for your interesting presentation. Being new on this committee, I really have enjoyed the presentation put forward today. I was interested that in your presentation you say there is no way the Quebec group would consider joining with English Canada. Has there been much effort put forward, or have there been meetings attempted, or are we just saying it will not happen?

Dr Cameron: In a constituent assembly? Is that what you are thinking about?

Mr Jordan: Yes.

Dr Cameron: I believe the Quebec government has stated it would not attend a constituent assembly. That is our experience within the National Action Committee, that until we had made it clear we were talking about English Canada and Quebec as distinct entities, we could not even discuss the Constitution. Our Quebec members have made that quite clear to us, that we would not be able to. I think that any time it is suggested, the Quebec government has rejected it. They will not come to a constituent assembly where they would be outnumbered.

Mr Jordan: But would you see any value in an executive group from both getting together to examine possible conditions under which they might come together? It seems to me that we are accepting separatism right off the bat.

Dr Cameron: The National Action Committee actually has not taken a position on independence for Quebec. We have taken the position that it is up to the Quebec people to choose and that we will support the choice made. The overwhelming majority of members of NAC in English Canada do not want Quebec to separate, there is no question about that, but the sense is that if we are going to coexist within one state, we have to negotiate a new relationship based on respect for the right of self-determination of Quebec and a redivision of powers.

I think really what we have heard from Quebec politicians is that English Canadians have to decide. That is what they are saying to us. They do not seem to be very interested in negotiating with us until there is something coming more clearly from English Canada. I would expect that at this point any such initiatives would not get very far because they would say, first of all, who were they going to talk to from English Canada? The Quebec government is not interested any more in being one of 10, and that process is not acceptable in English Canada either. It seems there does need to be a process and the forums in English Canada for a process whereby we get more clarity on what we want. I really foresee that if we again get proposals which would mean decentralizing power, we will get exactly the same reaction that took place around Meech Lake. I think a main basis for the rejection of Meech Lake was that decentralization.

1550

Mr Jordan: You also made the point about some funding being made available to the grass-roots level, to

participate. Do you feel the Quebec group is representative of the women of Quebec, or is it an exclusive group that is promoting this?

Dr Cameron: It is a coalition of women's organizations, so it would be women's organizations which are supportive of women's equality. It is quite a broad organization in Quebec. In general, there are differences between francophone Quebecers and some of the anglophone Quebec women's organizations, but in general it is representative of the women's movement in Quebec, those women's organizations active around women's equality issues.

Mr Jordan: I think of the many Quebec towns that border my riding of Lanark-Renfrew along the Ottawa River. They do not feel their views are being heard. I was just wondering, when you mentioned funding for grass-roots organizations, if there was something to be gained by these people being heard.

Dr Cameron: Yes.

Mr Wessinger: I would just like to get clarification. It seems from your presentation that you are suggesting that some form of asymmetrical Confederation is the only workable aspect, because it seems you are saying from your organization's perspective that the powers Quebec would have to have would be at odds with what you perceive the rest of Canada would want. Therefore, if you are to keep the country together, am I correct that this type of arrangement is the only one that is satisfactory to your group? Am I correct in that observation?

Dr Cameron: Yes. We have some problem with the term "asymmetrical."

Mr Jordan: Yes, I realize you do.

Dr Cameron: But in general, our view is that there is no way Quebec will give up its demands for greater power. There can be some negotiations around how much, but there is no way they will give it up. If the only other proposal is giving all the other provinces the same powers, we oppose that. So the implication is that Quebec will have different powers than the other provincial governments.

Mr Jordan: If we follow that up, are you going to be making any specific proposals or suggestions of how such a situation might work from a practical point of view? I know there are immense difficulties with respect to that whole question of Quebec having substantially different powers from the rest of Canada vis-à-vis the federal government. Does your organization have any thoughts or any contribution on how that might work?

Dr Cameron: What it does depend on is how English Canadians want to be organized. If you look at the proposals around quite strong decentralization, they give limited powers to the federal government. It would be possible to negotiate some arrangement where English Canadians had a common central government and then some arrangement about what powers would be shared between Quebec and the rest of Canada and what kinds of structure you would have to co-ordinate them.

I do not know that this is any more radical than what we are getting from the Group of 22 and others. The suggestions that are coming forward about the kinds of powers

the federal government would have are quite radical changes as well, so you would have to negotiate what they would be. The difference between what we are suggesting and what they are suggesting is that we do not want English Canada to be all fragmented.

Mr Wessenger: To carry that one step forward, would you have an objection to the other provinces having the same theoretical powers as Quebec, but having the right of delegation, of negotiating which government exercises which powers? Is that an acceptable solution to you, of having the provinces have the ability to opt out? Would that be objectionable to your group?

Dr Cameron: It depends what the conditions of opting out are. If they get to opt out with full compensation, if you end up so that the federal government has no kind of financial clout in its relationship with the provinces, we do not favour that. That is really what those proposals are.

Mr Wessenger: Basically what you really want to see retained is the federal spending power.

Dr Cameron: For English-speaking Canada, yes. We are opposed to losing that. It depends on how radically we think we are talking about the Constitution. I think in your report you talk about—I do not know the word used, but some kind of dramatic change in the division of powers. What we need to have a debate on—among the people of Canada, not just among the governments—is what are the powers English-speaking Canadians want their federal government to have and what are the powers they want the provincial governments to have. Part of our view about the complexity of federal funding arrangements, which are outrageous from the point of view of democracy, is it is

very difficult when you are fighting for child care to know which level of government to go to. You have to go to the municipal, provincial and federal levels of government. We are not in favour of that kind of complexity.

We think it is a direct result of an inability to accommodate the specific concerns of Quebec. If you look at the way that has developed, other provinces have opposed, in the post-war period, proposals around giving the federal government more powers in a social welfare state. The main difficulty there was Quebec. Ontario also opposed them, but if you had found where the popular sentiment was, I think there would be a lot of popular sentiment outside Quebec for giving the federal government more power.

If we are actually thinking as radically about the Constitution as some people seem to be suggesting, then we ought to be asking English Canadians, "What do you really want to see in this?" That is the debate we would like to see happen. We do not think people like the existing arrangements, but provincialization is not the only alternative to duplication. That is our position on it, but I certainly do not want you to think we like the existing financial arrangements.

The Vice-Chair: On behalf of the committee, I would like to thank you for presenting before us a number of ideas and directions that the women of Canada who you represent would like to go in.

With that, our committee will be adjourned until tomorrow morning at 10 o'clock. I would ask committee members to stay for a minute to make sure you have some documentation.

The committee adjourned at 1559.

CONTENTS

Wednesday 31 July 1991

Ontario Native Women's Association	C-1195
Aboriginal Urban Alliance	C-1199
National Action Committee on the Status of Women	C-1208
Adjournment	C-1214

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

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Ontario in Confederation

Assemblée législative de l'Ontario

Première session, 35^e législature

Journal des débats (Hansard)

Le jeudi 1 août 1991

Comité spécial sur le rôle de
l'Ontario au sein de
la Confédération



Chair: Tony Silipo
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Président : Tony Silipo
Greffier : Harold Brown

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Table of Contents

Table of Contents for proceedings reported in this issue appears at the back, together with a list of committee members and other members taking part.

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Table des matières

La table des matières des séances rapportées dans ce numéro se trouve à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et des autres députés ayant participé.

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

Thursday 1 August 1991

The committee met at 1010 in room 151.

The Vice-Chair: The committee will come to order. I would like to welcome people tuning into our proceedings this morning, this being the fourth day of our committee hearings with regard to the select committee and the work it is doing with regard to the Constitution.

ERROL P. MENDES

The Vice-Chair: To get started, I would like to present our first presenter, Mr Errol Mendes, a law professor at the University of Western Ontario, who is going to present to us on behalf of issues around the Canada clause and the division of powers. You should not feel restricted to that if you have any other things to add.

I also mention that Mr Mendes has presented his brief to all the committee members. There are some changes on the committees, obviously, because of yesterday's announcements, and a few of the subs on the opposition as well, so some of the members may have not have seen your brief, but I and others have.

Anyway, with that we would like to give you the floor. Basically what you have is an hour. We will give you about 10 minutes extra at the end, seeing we started a little bit late.

M. Mendes : Je vais présenter mon mémoire en anglais, mais mes excuses aux membres francophones parce que je n'avais pas le temps de faire préparer une traduction française.

I want to start my presentation with a general proposition, that in essence the constitutional problem facing this country is 50% political and only 50% legal/technical. Let me tell you the reason I think that.

As far as the vast majority of Canadians were concerned—the polls bore this out quite clearly—the vast majority of Canadians did not understand the technical details of the Meech Lake accord. What they did key in on were key concepts, and one in particular, the concept of a “distinct society.” One of the reasons I think Meech Lake failed, perhaps the primary reason why Meech Lake failed, is because of a fundamental disagreement between English-speaking Canadians and francophones in this country as to what precisely “distinct society” meant. In essence, that battle became a symbolic battle over people's place in this country and people's desire to have their own self-worth and self-identity recognized in the Canadian Constitution. Therefore, it became a battle over whether or not “distinct society” meant “superior to” as opposed to “equal with but different,” and for that reason I think 50% of the problem facing this country is political and therefore we have to address that 50% of the problem.

That 50% of the problem facing this country can be addressed in a Canada clause, because it is in such a clause where you can have Canadians—I am not talking about constitutional élites or the chattering classes that comprise

the media, but Canadians—find recognition of their own self-worth and their own self-identity in the Constitution and feel they have been given equal worth and equal consideration with all the other major elements of Canadian society.

With that in mind, over the past year I began drafting a Canada clause and tested it out with various groups and individuals across the country representing a broad spectrum of Canadians. I have come up with a Canada clause which could be a working model for such a recognition of the political problem involved in the constitutional reform facing us.

Before I read it out to you, I want to tell you the philosophy behind the drafting of such a clause, because I think it is important for you to know that. As I mention in my brief with the title *A Nation's Spirit Defined*, I think the spirit of a nation is like the spirit of an individual human. It is born with the personality of its progenitors, it is shaped by the environment of its early environment and, finally, there is a unique spark of spirit—some would call it a link to divinity—that comes from neither progenitors' genes nor the environment, that makes us capable of fight against genetic or environmental pre-destiny, whatever Phillippe Rushton at my university says, a spark that proclaims our uniqueness to the world.

Let me then describe the spirit of our nation in the form of a Canada clause that could become a preamble to the fundamental law of our Constitution. It goes as follows:

“Whereas the spirit of the nation was born in the ancestral homes of the first nations of the land,

“And whereas the people of Canada recognize as a fundamental characteristic of the Constitution, the unique, proud and dignified nationhood of the first peoples of Canada vesting in them the full protection of their existing and inherent treaty and aboriginal rights,

“And whereas the spirit of the nation was further formed from the pact of fraternity and co-operation that survived the battlefield between the first English- and French-speaking settlers of the land,

“And whereas the people of Canada recognize as a fundamental characteristic of the Constitution, the linguistic duality of Canada that gives succour to the English- and French-speaking minorities across the land, and affirms the role of the Quebec and Canadian governments and legislatures to preserve and enhance the francophone society, culture and language in Quebec and North America,

“And whereas the spirit of the nation has been nurtured by the evolving multicultural reality of the land,

“And whereas the people of Canada recognize as a fundamental characteristic of this country the racial and cultural diversity, present and future, of all regions of Canada,

“And whereas the Canadian people have demonstrated their unique identity to the community of nations through their diversity of regions, cultures and languages, creating a union that enshrines both respect for difference and for

the fundamental individual and collective rights of humanity, including substantive equality for those discriminated against by reason of gender, racial and ethnic origins, colour, religion, age and disability.

"Therefore we the people of Canada declare the following to be the supreme law of the land."

I should mention to you that this Canada clause has been sent to quite a few MPs across the country, including the federal-provincial office, and there is an indication that the clause may be included as a working model in the federal proposals in the fall.

I now want to turn then to the other 50% of our problem, the constitutional/technical side of the problem, which deals with the arcane constitutional and technical legal matters that need to be dealt with also, because obviously we are facing deadlines and we are facing the real possibility that Quebec may go for a referendum in 1992.

The way I have handled the division-of-powers part of the problem is, again, to start with first principles. I suggest that a solution to any constitutional crisis stems from first articulating and then recognizing undisputed common goals and undisputed common understandings of those in conflict. The common goal of all parties in Canada is to share a common economic space in the part of North America that is outside the political sovereignty of the United States. Even the separatist forces in Quebec recognize and accept this goal and would want, at a minimum, an economic association with the rest of Canada.

To this common goal one can add a common understanding that stands out very much in today's troubled community. We are beginning to understand that in the dying decade of this century, while economics and global competitiveness pull us towards larger economic units, the insatiable human quest for self-identity and determination pulls towards smaller political units, resulting in the fragmentation of ethnoculturally diverse federal and unitary central states.

If Canada is to survive into the next century, these two contradictory historical movements must be reconciled within the new structures of our nation's Constitution.

If we all accept the common goal and the common understanding just described, we can progress to delineating a possible solution to the constitutional crisis in the following manner. What I am suggesting now is quite dense and I would be quite happy to explain, in the question period after, some of the issues which may not seem clear from my first presentation.

First, I suggest that a constitutional process must delineate certain federal and provincial powers that could be shared. However, such powers could only be shared after a provincial referendum that would ratify or reject the power-sharing arrangements. This would be a primary democratic input into constitutional reform. However, there would also be an option on the referendum ballot for exclusive competence by the province over the powers suggested for power sharing. The consequences of provincial electorates choosing exclusive competence will be discussed shortly.

1020

If any provincial electorate opts for a power-sharing arrangement, a new constitutional and legal structure will

come into place. In the power-sharing areas, the federal government would, after consultation with the provinces, legislate national standards in each area. I will suggest, and I can follow it up in the question period, that such consultations could end up in the form of a federal-provincial agreement. I would call such standards "Canadian directives." I am using this terminology because the European Community, which everyone is pointing to as a possible solution for our problem, has a similar structure of governance.

Within the scope of the Canadian directives the provinces could tailor implementing programs to suit local needs in whatever manner they wished. The spirit and letter of the Canadian directives would be enforced by a new administrative and legal structure. In each of the power-sharing areas, a federal-provincial agency would be set up to oversee provincial implementation of the Canadian directives. Any individual or group contending that provincial implementation goes beyond the scope of Canadian directives could initiate a hearing before the relevant federal-provincial agency.

If the federal-provincial agency determined that there was a violation of the Canadian directive, it would first seek the amendment or repeal of the offending implementing legislation. If the province were to refuse to change or amend the legislation, the federal-provincial agency would apply to the Federal Court of Canada for an order of compliance with the Canadian directive. The province could at any time appeal the federal-provincial agency's finding to the Federal Court. A province would be constitutionally required to comply with the final determination of the matter by the Supreme Court of Canada.

I am suggesting an alternative procedure which would sidestep the two federal courts, the Federal Court of Canada, Trial Division and the Federal Court of Appeal, by having a direct reference to the Supreme Court of Canada by the federal-provincial agency for a compliance order. This would be a cheaper and quicker method. However, the enormous danger would be that it would overburden the Supreme Court of Canada, which already has, in my opinion, too much on its plate, especially since the introduction of the Canadian Charter of Rights and Freedoms.

What would be the political, social and moral and constitutional philosophy behind such an arrangement? First, some powers now exercised exclusively by the federal government, or provincial powers that are greatly influenced by the federal spending power, must be shared on the basis of equality. Second, because the provinces would be involved in setting up the national standards, and also because they would have autonomy in implementing them, the system would enhance a province's self-identity and determination, but and I want to emphasize this, only as determined by the people of that province, not by individual, self-aggrandizing, constitutional élites. Third, even in these areas there may be a need to enhance the national economic and political identity by means of national standards.

I am suggesting that in addition to having national standards, one way to guarantee the integrity of a national economic and political identity would be to entrench into the Constitution provisions which state that Canada is an economic union comprising a common market that is based on four freedoms. Again, this is taken from the fundamental

document of the European Community, the Treaty of Rome of 1957. These four freedoms would be: first, freedom of movement of people and labour; second, freedom of movement of capital; third, freedom of movement of goods; and, finally, freedom of movement of services. Such a constitutional entrenchment of a Canadian common market would also bring into question the legality of many, if not most, barriers to interprovincial trade and commerce.

I am suggesting that the following areas would be the most likely candidates for federal-provincial power-sharing arrangements: first, manpower training; second, unemployment insurance, pensions and other forms of income support; third, immigration; fourth, communications; fifth, culture; sixth, health; seventh, education; and, eighth, other new national shared-cost social programs such as, for example, any new national shared-cost day care programs.

It will come as no surprise to you that these are also the areas in which Quebec will, in all likelihood, insist that it must have either exclusive, or at least substantial, autonomy in preserving and enhancing its distinct society. There are a lot more powers which the Allaire report has said they would like to add to these areas, such as energy and others I will discuss in the question period, if you want to, but these are the areas I think they will focus on the most, in seeking considerable autonomy.

Provincial implementation of programs within national standards contained in the Canadian directives could be financed both by cash transfers and by the federal government allocating tax points. Such federal financing would also politically justify the federal government setting national standards in this area—of course, after consultation with the provinces in the form of federal-provincial agreement.

In the area of culture, conditional cash grants could continue to be made, thereby justifying the continued existence of the Canada Council. I have a great fear that the Canada Council may be in danger of being closed out, and that is why I have specifically made reference to it, because I think there needs to be a national culture. I am worried about the future of the Canada Council.

In the area of immigration, the federal government would again make available conditional cash grants for immigration resettlement, language training, etc.

Finally, in the areas of health, education, and other national social programs, established programs financing would continue until lack of federal financial resources would necessitate a move to funding on tax points for the wealthier provinces, and allocation of funds to the poorer provinces from a new Canadian interregional compensation fund, which I will discuss shortly.

As I have mentioned above, there could be an option on the provincial ballot for exclusive jurisdiction over the areas listed for power sharing, with the exception of immigration. I will tell you in a moment why I single out immigration as an exception. If a province, in a referendum, were to opt for such exclusive powers, there would be no interference from the federal government and Parliament either directly or indirectly through the spending power. The province would still, however, have tax points allocated to finance such exclusive jurisdiction, but no cash compensation. In addition, the province would not be eligible at

any time for allocations out of the interregional compensation fund to finance such exclusive jurisdiction. Finally, no elected MP from that province could have the particular portfolio in the federal cabinet over which exclusive jurisdiction is claimed. Again, I will tell you at the end of my presentation the philosophy behind these suggestions.

Moving on to the next important part of the division of powers that I am suggesting, I suggest there are 10 groupings of jurisdiction over which the Canadian Constitution, the Canadian Parliament and government must have control, either exclusively or on a power-sharing basis. These powers are listed in the present provisions of section 91 of the Constitution Act, 1867. I suggest that such powers are either essential for the federal government and Parliament to have to function as a responsible federal entity, or go to the very essence or the soul of this nation.

These powers will be listed in no particular order of importance as follows:

1. The supremacy of the Canadian Charter of Rights and Freedoms, and I will expound in the question period perhaps why I have put that at the top of the list even though, as I have said, there is no order of importance;
2. Citizenship and immigration;
3. Defence and armed forces;
4. The whole area concerned with foreign trade and shipping and navigation, namely, customs, tariffs, foreign trade, fisheries, shipping and navigation;
5. Foreign policy;
6. Currency and monetary/economic policy;
7. Natives and lands reserved for natives: Again, I want to emphasize that the word "natives" is not my own choosing, because I think we should be moving on to new terminology and the proper terminology is the first nations of Canada. However, I am saying "natives" because that is the language used in the Constitution Act, 1867;
8. Justice, which would include jurisdiction over the making of the criminal law and the final appellate nature of the Supreme Court of Canada;
9. Environment in the areas of federal jurisdiction;
10. Language in federal institutions.

It is in these 10 critical areas that jurisdiction cannot be claimed exclusively by the provinces without a major upheaval to the federal system of Canada and the nature of representation in the federal institutions of the nation, in particular the House of Commons. However, I am also suggesting that these areas should be looked at and a new division-of-powers structure evolved for another reason, which I am not afraid to say.

I suggest that as long as there are radical separatist forces in Quebec such as the opposition Parti québécois—I should say the present leadership of the Parti québécois; other times and leaders of that party were not as separatist as the present leadership—there will be demands that the province of Quebec take back some or all of the essential powers listed above. The simple fact we have to come to terms with is that this nation cannot stop itself from being thrown constantly into constitutional crises if a structure is not put into place which would be prepared to deal with the threat of the radical separatists at any time.

1030

The structure I suggest to put Canada on a path of constitutional security is as follows. Before I go into the details of this, let me explain it in very simple language. The idea behind what I am going to be suggesting next is something you may be familiar with in the context of your own domestic relations. If you have a child or a partner who is constantly threatening to leave, one of the ways to handle the situation is to work out an arrangement where you say, "You can leave at any time, provided the following steps are followed." If those steps are reasonable and they are laid out clearly, I am not sure those threats to leave will be made as often as they were made in the past. I think we have to face that reality.

With this simple thesis in mind, let me tell you the division-of-powers structure I am proposing for these 10 essential areas. Any province can seek complete jurisdiction over any or all of the above essential powers, with the exception of jurisdiction over the first nations and lands reserved for them, in a provincial referendum. However, if a provincial electorate opts for complete jurisdiction over any or all of these 10 essential powers, federal seats in the House of Commons will also be cut according to the percentage of essential powers claimed exclusively by the province.

To determine this, referendums held to determine exclusive jurisdiction over the 10 essential areas will be done on the basis of federal constituencies. Those ridings with the highest votes for complete jurisdiction would lose their federal members until the requisite percentage is reached.

If a province claimed exclusivity over all the essential powers, with the exception of currency—I say the exception of currency because even the Parti québécois would want to leave currency with the rest of Canada and want to continue using the Canadian dollar—the province would accede to the status of a fully sovereign independent state with no representation in the House of Commons. There could be representation in a reformed Senate, but as far as the House of Commons would be concerned, there would be no representation.

Repayment of that province's share of the federal debt would have to take place, whether immediately or amortized over time. There are many formulas suggested for how this can be done. There will be a sizeable financial incentive not to opt for complete sovereignty. There will also be a sizeable financial and political incentive not to demand exclusivity over powers not necessary for the protection of the cultural, linguistic and social self-identity and determination of the people of each province.

I want to emphasize that point, because the division-of-powers structure I am suggesting also takes care of the desire of distinct peoples to have as much autonomy as they feel necessary for their own self-identity and self-determination. I am not trying to argue against that to undermine that quest.

Finally, if exclusive jurisdiction is claimed by any province after a provincial referendum over natives and lands reserved for natives, the provision in section 91 of the Constitution Act, then the native peoples must have a similar right of self-determination. They may have a similar right already under international law. However, the native

peoples of Canada are the most sacred of trusts imposed upon the federal entity of Canada from its very inception. If there is no reconciliation between a province which wishes to separate and its native peoples, then that province would have to make a unilateral declaration of independence and rely on the international community to recognize its separate sovereignty under international law. Canada, however, would be morally bound to argue against such a UDI if the native issues in that province were not resolved.

Third, among the factors making it financially and economically attractive to be integrated into a new Canadian federal structure would be potential actual access by a province to a constitutionally entrenched interregional compensation fund. This fund would primarily function as a means to ensure adequate finances for the disparate regions of Canada. I am suggesting that a minimum of 30% of the amounts designated by the federal government for public spending should be channelled to the fund.

Provinces would be able to draw upon the fund to provide specified public services comparable to other regions of the country in accordance with a needs formula based inter alia on population density, income, immigration and unemployment. Maintenance of and access to the fund would be regarded as a fundamental element of equity in the Canadian Constitution.

I do not think I am telling you anything new, when at least one province, namely, Newfoundland, will insist that something like this would have to be written into the Canadian Constitution in the next round.

I should also mention that there are various federal countries around the world that have gone through problems similar to ours that have come up with a similar type of interregional compensation fund.

I have outlined suggestions for constitutional reforms to the Senate, the constitutional amending procedure and aboriginal rights elsewhere. I would be happy to restate my detailed suggestions for reform to these areas at a convenient time and place, or in the question period.

In conclusion, I want to emphasize some of the fundamental principles underlying my detailed suggestions. Underlying all my proposals for constitutional reforms are the lessons learned from the Meech Lake debacle. One of the most critical lessons to be learned from that sad episode in the history of our nation is that equality has taken on an immense significance in the Canadian body politic. Some of this I attribute to the legalization of Canadian political life by the Canadian Charter of Rights and Freedoms.

However, the fact remains that, at least in Canada outside Quebec, there is a large majority which wants to see, both in form and in substance, the idea of equality between provinces preserved in the next, most critical round of constitutional reform, even though it has never historically been part of our fundamental constitutional tenets. Despite Premier Wells's assertions to the contrary, the history of this country since its inception has shown equal concern and respect for the provinces by treating them differently on many occasions and according special status to some to account for specific needs and concerns. Newfoundland itself has been accorded special treatment in certain areas in the past.

However, my suggestions for a new division of powers takes into account the new reality that all provinces must be seen to be treated equally, because Constitution-making is perhaps the ultimate art of the possible. However, at the same time, the scheme allows the people of each province to determine and to decide whether they desire special powers to self-determine and reinforce the distinctiveness of their societies. All the people of all the provinces will have that ability. It will be the people who decide the political and constitutional identity of their province and their nation, not self-serving constitutional élites.

If the people are allowed to so speak, my prediction is that a strong, united Canada, with a Quebec that has a sense of security and self-identity, will emerge. Therefore, my final words will be: Let the people of this great nation bespeak its true character and identity. Let nation-destroying self-interest be silenced.

1040

The Vice-Chair: Thank you very much for your presentation. There are a number of questions. We will allow members a little leeway with regard to the length of their questions. We have some time left.

Mr Winner: I heard your presentation, Professor Mendes, last February. I found it compelling then and I find it fascinating now. I am glad we have the opportunity to explore, with a little more time, some of the issues you raise in your papers.

First, with regard to the Canada clause you have drafted, which I find to be a very articulate statement of what Canada may be about, there is a point in your preamble where you describe the sovereignty of our first nations and describe full protection of their existing and inherent treaty and aboriginal rights. As it stands, that is already spelled out in section 35 of the Charter of Rights, and what our native delegations are asking for is an expansion and clarification of that and inclusion of the inherent right to self-government. I wonder if you would go so far as to include the inherent right to self-government in that paragraph. Then I have a couple of other quick points I would like you to answer.

Mr Mendes: Yes, I would. The reason I did not include it is that for the longest time, since 1976, when I presented before the Penner committee on self-government, I have been on record as stating that in my view self-government is not something the first nations will have to negotiate. They have it already. It is part of their inherent aboriginal rights and despite the wording of section 35 they have it and it is contained in the concept of inherent aboriginal rights.

Mr Winner: So are you then prepared to recognize in your preamble the inherent right to self-government and to recognition?

Mr Mendes: Absolutely. To spell it out absolutely. Yes.

Mr Winner: Second, in a paper you presented last February you suggested that any legislation that involves the vital interests of the first nations of Canada should have the consent of at least three quarters of the first nations representatives. Now traditionally, decision-making among first nations has been one of consensus and I wondered how

your model would comport with the traditional decision-making process of our first nations.

Mr Mendes: My suggestions in my earlier brief to you last February were in the context of a reformed Senate where I was advocating representation of first nations in the Senate. They would be guaranteed representation of five or 10 first nations members in the Senate. The way I proposed that the first nations could be brought into the power structures of this country would be that if any legislation emanating from the House of Commons was deemed to be of vital concern to the first nations, it would require the consent of three quarters of those representatives in the Senate, in a reformed Senate. Now in terms of how that ties in with the traditional first nations method of consensus decision-making, I would hope those first nations representatives would liaise with their representative constituencies before they would cast their votes. There would be the traditional method of consensus decision-making integrated into our structures because the Senate is our institution, at least a non-first nations institution. So you would draw the consensus decision-making into the non-aboriginal institution.

Mr Winner: Last, if I may, your push-pull model for Confederation recognizes, at least in the revision you presented today, that rights over currency may remain with the federal power and yet that would not be an all-out declaration of sovereignty on the part of a province such as Quebec. Now I note that even the Allaire report acknowledged that currency and customs, as well as debt, should remain a federal responsibility. Would you be prepared to include customs and defence as well as currency in the exception before you have what might be regarded as an all-out declaration of sovereignty that would take away representation federally in those areas and also funding?

Mr Mendes: Yes, if a sovereign Quebec was still willing I think it would have to. If it is going to be involved in economic association with the rest of Canada in a common market type enterprise, it would have to allow federal jurisdiction over elements of foreign trade, including customs and tariffs, maybe even shipping and navigation, too.

Mr Winner: So those could remain exclusive federal powers?

Mr Mendes: Right.

Mr Drainville: I thank you for your very interesting presentation. I am interested in two or three points that came up. The first is the direct application to the Supreme Court. One of the concerns that has been expressed in the last while through the members of the legal profession as well as those who sit on the bench is that, with the change in Canada to the acceptance of the Charter of Rights and Freedoms, right now the Supreme Court is totally overburdened as it is. I am trying to understand, because I think the system that you put forward has possibilities, how we could provide such a direct application to the Supreme Court without causing more problems than we already have with the legal system?

Mr Mendes: That is one reason I suggested having an intermediate step, a direct reference to the Federal Court; ie, the federal trial court and the Federal Court of Appeal.

The mechanism the Supreme Court has used quite well to control its docket, or to control its workload, is to refuse leave to appeal from the Federal Court of Appeal if it agrees in essence with what the Federal Court of Appeal has said. They will say, "Leave to appeal has been denied." Okay? So that is one way you can control the workload. That is why I included as a separate alternative a reference to the federal trial court and Federal Court of Appeal.

To lessen the expense involved, maybe you want to cut out the federal trial court. Maybe you just want a direct reference to the Federal Court of Appeal, but that is unusual. Usually if you are going to send stuff to the Federal Court of Appeal you must send it at least to the federal trial court.

Mr Drainville: In terms of the comments you made about a province opting out eventually because it takes on responsibilities for certain areas that are acknowledged to be areas that are under federal jurisdiction—if I am not putting this question exactly accurately please correct me—you indicated it might then lose its membership in the House of Commons but might retain it in the reformed Senate. Obviously there are a lot of things in there that I do not quite understand so perhaps you could explain a little bit about how that might happen.

Mr Mendes: Sure. Again, I am going to have to go into the barest details because obviously I could go on for hours as to the details of what I am proposing. I want to clarify something first. I am not saying that all federal powers will result in a loss of representation in the House of Commons. It is only the 10 essential areas. I am not sure really that at least the present government of Quebec wants to take back any of those 10 areas. Maybe one; I can think of one where it has made noises about taking it back. But at least the present Liberal government in Quebec will not want to take back. The present Liberal government I think will be happy with the areas of power-sharing, being able to have considerable autonomy through a power-sharing arrangement, as I have suggested, or exclusive competence with financial consequences.

If they do opt to take back some of those 10 essential areas, there would be a reduction in the House of Commons. Now if the Parti québécois came to power, obviously it would take back a hell of a lot apart from the two you have mentioned. However, they would still want to have an economic union with the rest of Canada. That is where I think the reformed Senate would play a critical role. The structure for a reformed Senate that I suggested to this committee last February was a form of triple E Senate where you have each province sending the same amount of representatives plus representation from the north, the Yukon and Northwest Territories, and a guaranteed first nations representation.

I suggested in the brief I presented to this committee last February that even a sovereign Quebec may want to get involved in the Senate because it would want to have a say in the areas that it has allowed the federal government to retain, such as customs and tariffs and currency, and it would have a voice in shaping that policy. That structure accords with this notion that is now gaining currency in Quebec of the so-called new superstructure of a renewed

Canadian federation. The Senate could be part of that new superstructure.

Mr Drainville: Thank you for that. In terms of the interregional compensation fund, you say this fund would primarily function as a means to ensure adequate finances for the disparate regions of Canada, that a minimum of 30% of the amount designated by the federal government for public spending could be channelled to the fund. The 30% figure: I am just interested how you came at that.

Mr Mendes: I have been studying other federations which have gone through crisis and one of the federations which intrigues me a fair bit is Spain. Spain went through a lot of the gut-wrenching stuff that we are going through now after the fall of its dictatorship. One of the key elements in this new constitution was such a fund where the federal government allocated at least 30% of its public spending to this fund to ensure that the disparate regions of Spain would offer similar comparable public services.

Mr Drainville: So the 30% figure is based upon the experience of Spain as opposed to looking at the economic situation and needs in Canada.

Mr Mendes: That solution came about after a lot of study and consultation. I think if it can work for one country, it could work for us.

1050

Mr Grandmaitre: I am looking at your very interesting presentation. I think you have lost total confidence in the central government, the existing system. Am I right or wrong?

Mrs Y. O'Neill: A leading question.

Mr Mendes: That is a leading question, and as a lawyer I am determined not to get sucked into those questions. It is not so much that I have lost total confidence in the present system. It is just that I think we are seeing what I call historical catharsis at this point in Canadian history. We have been sort of sailing along for the past 123 years pretending that we have all settled the fundamental questions of our society. We have not. We have not from day one. For example, we have not, from day one, figured out what exactly the role of collectivity vis-à-vis the individual is going to be. We have to determine that now, now that we have reached the constitutional cathartic moment. Because of that, there is no alternative but a wholesale restructuring.

It is not so much a question of me losing confidence; it is the question of history losing confidence and, as a result, we have to have a new structure for our society.

Mr Grandmaitre: This new structure, professor, you would accomplish this through referenda?

Mr Mendes: With this new structure, one of the elements I worry about—I think perhaps this could be behind your question and let me bring it out at the moment—is whether decisions will be made on behalf of the people which people do not agree with. I worry, for example, and I am only saying it hypothetically, about the Premier of Alberta deciding that he should get back for his province a whole bunch of powers which the people of Alberta fundamentally disagree with. If you are going to involve a Canadian identity, it should be the people who speak.

I caught a bit of the presentation by the National Action Committee on the Status of Women yesterday. I think you are starting to realize that when the people speak, especially to a representative organization such as NAC, the people in the rest of Canada, outside Quebec, want a strong central government despite what the provincial premiers may want. However, the people of Quebec may opt for a greater degree of autonomy.

Let the people speak. Do not let the self-serving constitutional élite speak. That is my fundamental disagreement and I am going to bring it up now because I am sure somebody is going to ask me questions about the Group of 22's findings. I am vehemently opposed to that for that very reason. I want the people to decide. I do not want constitutional élites to decide. Not me, not anyone else, but the people.

Mr Grandmaître: In looking at your power-sharing formula or arrangements, I find it very interesting. I think you are agreeing with the Bélanger-Campeau commission and also the Allaire report. I am very surprised because most people—well, outside of Quebec anyway—do not agree with the Allaire report for the simple reason that it is asking for too much or would be expecting too much from the rest of Canada.

In your initial opening remarks, professor, you pointed out very clearly that misunderstanding or lack of understanding of the Meech Lake accord created a very sombre humour in Canada. If we were to go with your eight, let us call them power-sharing arrangements, do you not think we would create more confusion? They could not understand the Meech Lake accord. How could they go through eight different power-sharing arrangements? It would take 850 years. It took us 125.

Mr Mendes: Let me reply to your question in two specific parts, maybe three. First, while it may seem that I am agreeing with Allaire and the Bélanger-Campeau commission in one respect, I am fundamentally not. They are suggesting that the same amount of devolution be applied to all the provinces and I think that is fundamentally at odds with the wishes of the people of Canada outside Quebec. They do not want massive devolution of powers outside Quebec. The people outside Quebec want a strong central government. They see the central government as their national government, as NAC pointed out yesterday.

In that respect, I am fundamentally at odds both with Allaire and Bélanger-Campeau and the Group of 22 because I think if you let the people speak they will let their self-identity be known. I hope this committee, when you travel across the nation, discusses this problem. I would be willing to put a lot of money on it that you will find that right across this nation, when you go travelling, you will find that the people—not the élites, but the people—outside Quebec will want a strong central government and they may very well decide against any devolution of powers outside Quebec. I would not be surprised if that was the result, whereas Quebec would opt for taking back some of the powers. So you would have an asymmetrical federalism based on equality.

Mr Grandmaître: Basically you are agreeing with me that we need a strong central government?

Mr Mendes: That is right, but it would be the people who decide, not the élites.

Mrs Y. O'Neill: A short question first, Professor Mendes, and I am very pleased you came back. Particularly when we brought the hearings to Toronto here at the end of February, we had a lot of requests for a Canada clause. You have mentioned several groups within your "whereases" and I am wondering how far that has been vetted among the groups that are so mentioned, the diverse religions, cultures, races, colours within Canada. Have you tested this with those groups or only with politicians?

Mr Mendes: I have tested it with anyone but politicians.

Mrs Y. O'Neill: Okay. That is likely very helpful here.

Mr Mendes: I can tell you that I have met with considerable enthusiasm by first nations members, by women's groups, by the multicultural community. There is a lot of enthusiasm for such a clause.

Mrs Y. O'Neill: Thank you so much for your work on it. I want to say something, and I think my remarks really flow from both Mr Grandmaître's and Mr Winninger's remarks. I have some difficulty with the push-pull concept. I think those of us who work in government, and therefore work with people all the time, hopefully do have as one of our main goals the helping of individuals on a daily basis to a better sense of self-worth. At least that seems to be a goal that should be government's and should be government policy, and I have seen it in many politicians.

You compared this to family structures. I also have a lot of difficulty when people get into very detailed settlements, whether it be custody or other forms of family relationships. I guess what I am saying is that I find it extremely difficult to understand how one can legislate self-worth or a sense of self-worth or attainment of self-worth. This is what I have trouble with when you talk about the percentage for the aboriginals, when you talk about the fund. It is all so very complex.

It may go back to the original statement you made, I think, in reference to Mr Grandmaître, that we had not dealt with a lot of these issues and that Canada just sort of seems to slide along. I am wondering if that is the way Canada has to operate. I know we have a division of powers. I know that is in the BNA Act. I know that likely is going to change very soon. But when you start to talk about percentages and very strong delineations in legislation, I do not really know whether Canadians, first of all, want that, or want to put their minds to really understanding what all that means and making the decision to that point in a referendum.

Mr Mendes: Let me again answer your question in several parts. First of all, we can slide over the precipice. What is your alternative? If we just slide along, we may slide along into the breakup of this country. That is my number one response.

The second response is that I am getting very uncomfortable with this idea often put about, especially by politicians, that the people will find things too complex for them to understand. As one of the very few people who has actually read the entire free trade agreement, because my other interest is international business, I was amazed that

politicians felt it was simple enough that they could transmit the message to the people. The actual treaty is about that thick, and I wonder how many politicians themselves have read through the whole thing. Yet they felt it was simple enough that they could present it to the people in what essentially was a referendum election, but not eight areas of division of powers?

Mrs Y. O'Neill: Okay, I will accept that. I do have difficulty, as I say, in the firmness of your position. Maybe it is a beginning position; I do not know. I think people are certainly capable of much more than politicians think. I agree with you. I think this is a problem that has to be dealt with, and I appreciate your contribution to that.

1100

Mr White: When I read through your document—the issues you talk about for federal-provincial power-sharing arrangements, or potential arrangements—I want to counterpoint that to some degree with the other document I have here about the Canada clause which identifies the essential identities and values of the land and people of Canada.

As I read the powers that should be accessible to power-sharing, it strikes me that many of those areas are ones I would consider to be essential issues around the values of what we have had as Canadians—issues around health, education, culture. I can also understand very well why those should be accessible to power-sharing, and yet the guarantee of those would be through something which would not be so closely entrenched.

I am interested in hearing further about the Spanish experience. The kind of agreement between the provincial and federal governments, as you know, is sometimes more honoured in the breach than in the follow-through, especially when it comes to established programs funding recently. I guess my concern here is, do you see a means of strengthening those values, either in the document or as a fundamental right, so that the people of Canada would have that assurance?

Mr Mendes: Let me take health, the one you mention in particular, but it can apply to any of the other eight areas, I guess. What we have now is much worse than what I am proposing. What we have now is essentially a form of power-sharing, with the federal government influencing health-dollar spending through its transfer payments. As you all well know, that is being slowly reduced and we are moving over somewhat. I think by 1993 or 1995 Ontario will have no transfers coming to it from the federal government in the area of health. What then? Suddenly there will be no safeguards to ensure the national standards that are there in the Canada Health Act.

Mr White: Precisely my concern.

Mr Mendes: Basically, the system I am putting into place will guarantee national standards being enforceable. Let's take, for example, the health system. Let's assume this system is acceptable to the majority of governments and the people of Canada. The federal government and the provinces would enter into negotiations and consult to come up with national standards similar to those in the Canada Health Act, the five principles of portability, etc.

That would then be entrenched in national legislation called "Canadian directives."

If any province were to violate the standards in the course of implementing those Canadian directives, you would have individuals having legal recourse to ensure compliance all the way up to the Supreme Court of Canada. That is a much better system than what we have right now, and it is based on the model of the European Community. So in some respects you are guaranteeing health as a fundamental right of Canadians if you opt for this system.

The Chair: Mr White, I am afraid I am going to have to cut you off, unless it is very short. There are two other members who want to speak and we have about five minutes left.

Mr White: I have just a couple of very short things.

The Chair: I will time you.

Mr White: Would it be possible to define that collectively as a freedom, as you have for the economic issues above?

Mr Mendes: If you define it without the structure, if you just define it as a right to a freedom, it is not enforceable. There is no structure to enforce it. If you put it into a charter of social and economic rights—I have discussed this a lot with members of the provincial government—it is unenforceable. You cannot ask a judge for an injunction to have a good health care system. This way you can enforce it. It is detailed, it is precise, it is a working system which can be enforced.

Mr McLean: Professor, I have enjoyed your remarks here this morning. It is obvious you have done an awful lot of work on the Canada clause. I have a question pertaining to the reform of the Senate. Could you elaborate on some of the reforms you anticipate should take place to reform the Senate?

Mr Mendes: In my brief to you last February, I suggested that we abolish the present Senate, which I think most Canadians would be in agreement with, and come up with a version of a triple E Senate. I am even suggesting getting rid of the name "Senate," because in some respects that is a throwback to our ties with Britain and a system based on bringing an aristocratic element into our society.

For reform of a triple E Senate, basically each province would send equal numbers, but they would be grouped within six regions of Canada. Each region would have the right of veto over legislation which directly affected it, but the right of veto would have to be reached by a consensus vote, such as three quarters, etc.

In that respect I am retaining to some extent Ontario and Quebec's traditional role of influence—not dominance; I do not think any province has a right to dominance any more—in this reformed institution, because they could theoretically veto legislation which was antithetical to Ontario's best interests by a requisite three quarters of the representation. It would also guarantee native representation in this Senate, this reformed upper House or whatever you call it.

I am also suggesting that this is the institution which would have a subsidiary role of focusing in on Canada's economic situation, an institution which would suggest regional and national industrial policies.

The third facet of constitutional reform, which I have not mentioned, is the economy. Most people do not live or

die on the Constitution; they live or die on the economy. The economy has to be addressed, and I would suggest that the upper House also be a place where regional and national industrial policies be examined and proposed, because we desperately need one. This economy is dying and we desperately need new strategies to revive it. I suggest that a regional House would be able to look at the strengths, the comparative advantages of each region, and come up with regional industrial policies and then national policies, having looked at the regional strengths.

A lot of my suggestions for the upper House is based on the German Bundesrat, or upper House, which I think is one of the most successful upper houses in the world.

The Vice-Chair: A very short question, Mr Curling. We are running out of time.

Mr Curling: Thank you very much, Mr Chairman, for even accommodating me at such a late time.

Professor, your presentation here had me thinking in so many directions, so many thoughts, and there are so many questions I would like to ask you. I will just make a quick comment and ask you a very short question, because the comment will be important.

I fully agree with you that it is time we start defining what Canada is all about. Leaving it alone and letting it just rumble along reminds us of the saying, "If it's not broken, why fix it?" Sometimes we never see the crack. The hairline crack can be devastating itself. It goes back to the other saying, "You either pay me now or pay me later."

There are many things in your presentation that—I would not like to use the word "bothered" me, but brought me to a point of provoking the thought itself. I notice you base most of the decision on what should be done on the referendum. The present system here in Canada is a three-party system, so when we go, those who get the majority sometimes do not get the majority vote of the people, but as a percentage of that maybe far less than even 45%, far less than 50%. So you have brought it down to more or less a referendum.

Would you see Canada legislating that when one votes it be compulsory or one will be fined, so that when we do make a decision on all that we have said, all people participate? People would lose even their representation on certain issues in certain regions if they do not come up to a certain percentage level, and they have also reduced it to a yes and no; in other words, the referendum aspect of it. Therefore, it is a free vote, as we call a democracy, and only 40% would have made that decision. Would you feel that would be an adequate decision?

1110

Mr Mendes: I think you are misunderstanding a lot of what I am saying. First, in terms of referendums, the reason I am proposing referendums for the power-sharing arrangements is I want people to decide. I do not want constitutional élites, who may change and be gone into the backwoods of history within a few years, to decide to take back a sizeable amount of powers from the federal government. If you let the people speak, that is a decision which will have legitimacy for a long time.

That is my fundamental reason for referendums. I do not want provincial premiers making decisions on taking back huge numbers of powers from the central government, because I do not think the people want that. You may have a Premier who has been elected, and some people would say the standard majority now is almost 40% or sometimes even under 40%. You can have a majority under 40% if there are three parties in the race. If there are more than three parties, you can even have less than 30%.

Mr Curling: If 6% of the people voted in the referendum, and 60% of that amount voted for it—

Mr Mendes: I do not think that if you have a referendum on something as critical as the nature of your country, only 6% will vote. I think those are absurd hypotheticals which would not be realized. If you have a provincial referendum which is deciding the nature of your country, I think more than 6% is going to turn out.

The Vice-Chair: Thank you very much. Unfortunately, we have gone a little bit over our time. I myself had questions, and I wish we would have time to wrap up. On behalf of the committee, I would just caution that sometimes we talk about our federal institution as if it does not work. I would myself personally say that it has worked fairly well over 120-odd years in providing us with a fairly good standard of living and fairly good programs, etc. But I would allow you maybe a minute if you have something you can say in a minute to wrap up, and from there we are going to adjourn for a couple of minutes.

Mr Mendes: I know you are travelling the country, and quite honestly I would be delighted if you could test some of these ideas across the country because I think you will find that the people and the representatives in other provincial legislatures would find a lot of agreement with us, even in Quebec. I gather you are going to be meeting the committee in Quebec, too. I would be delighted if you tested some of these ideas because I think you will find a national consensus on some of these ideas.

The committee recessed at 1113.

1121

KATHLEEN RUFF

The Vice-Chair: The committee will come to order. Presently we have before us Ms Kathleen Ruff, who is going to present to us. We were late starting this morning, so we will allow a little bit more time at the end.

Si vous voulez faire votre présentation, si vous êtes prête, à n'importe quel temps.

Ms Ruff: I would like to first say that I am speaking for myself, and I am speaking mostly from a national perspective. I am living in Quebec and I am involved with a national program called the court challenges program, which funds charter test cases across the country. I have had a long involvement in human rights issues in many regions of Canada. I was director of the British Columbia Human Rights Commission for about six years, and in the 1970s I was president of the Canadian Association of Statutory Human Rights Agencies a couple of times. I was the founding publisher of the Canadian Human Rights Reporter and the Canadian Human Rights Advocate, and I

was with the CBC Ombudsman for one short period. The last number of years I have been director of the court challenges program and now I am the chair of the equality rights panel of the court challenges program. That is the kind of perspective I am coming from.

I would like to thank you for inviting me to appear before you. I have provided copies of my notes. I am sorry you did not get them in advance but you do have them, I believe. I have spent most of my life working with groups, such as women, racial minorities and persons with a disability, who are traditionally and typically shut out of the decision-making process across the board in our society. The result of that exclusion is that decisions are bad, do not hold up and are divisive, and the disadvantage of those who are excluded increases.

If native people had been part of the decision-making process, would the waters and lands around Grassy Narrows, where they had lived and made decisions successfully for thousands of years, be the polluted nightmare and source of despair and death they are today? There was not just one killing that happened there. I think the native people have been killed by our society, too.

If poverty-stricken women who made the mistake of believing in the marriage fairy tale and are now raising their children as single mothers on welfare were part of the decision-making process, would cost-sharing payments and equalization payments for social services, health and education be slashed as they are today?

The Constitution has a whole special section on equalization and regional disparities in which the governments of Canada make solemn constitutional commitments to provide "essential public services of reasonable quality to all Canadians" and to "ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation."

But as the single mother on welfare I mentioned could tell us, this is not what is happening out there in Canada. In fact, as the National Council of Welfare has just documented, the federal government is unilaterally doing the exact opposite and ending equalization payments to the provinces. The council expresses the fear that if this trend continues, every last penny of federal cash for health and higher education will disappear within a few years, regional disparities will be magnified, medicare will effectively be dead as a national health insurance system, and minimal standards will be gone.

There has been no discussion, no democratic participation, in what is a major change in Canada's social policy, a major change in federal-provincial relations, and a major reversal of a constitutionally enshrined commitment.

I think it is important to draw some conclusions here:

1. Having a provision in the Constitution does not necessarily mean anything at all.
2. This is particularly so when the decision-making is a closed, unilateral process.
3. This is particularly so when those who will be hurt by the constitutional violation are members of groups who have traditionally and typically been powerless and excluded.

In other words, there is a lot of hypocrisy around the Constitution, and it is important that we do not just look at words on paper but how to make sure they have real meaning. When decision-making is a closed process of a tiny élite, democracy is undermined; constitutional rights are undermined.

Je crois que la démocratie devrait vouloir dire beaucoup plus que juste faire une petite marque sur un morceau de papier tous les quatre ou cinq ans. La constitution devrait dire que chaque membre de la société ait les moyens de vraiment s'assurer que les personnes soient traitées d'une façon vraiment équitable, et que les garanties constitutionnelles soient vraiment respectées dans la réalité quotidienne des Canadiens.

Aller devant les tribunaux pour essayer de faire valoir les droits constitutionnels n'est pas l'approche idéale. Les personnes dont les droits sont les plus supprimés sont souvent les mêmes personnes qui ont les moindres ressources pour se servir du système juridique. C'est un processus long, complexe et lent, et normalement quand on va devant les tribunaux, c'est juste après que les droits ont été brimés. Alors, dans un sens, les gens ont déjà souffert, puis ils vont devant les tribunaux après avoir souffert des désavantages.

Les juges, en général, représentent le même type de gens que ceux qui ont pris les décisions au début, des gens qui sont privilégiés et qui viennent d'une petite élite de personnes. En général, les juges sont en arrière des réformes sociales, pas en avant. Je crois que les francophones partout au Canada sont au courant de ça, si on regarde en ce moment. La Cour suprême du Canada a rendu des décisions constitutionnelles respectant les droits des francophones partout au pays, et surtout les droits scolaires. Mais elles ne sont pas respectées par les provinces. La province de Saskatchewan, par exemple, a dit très clairement qu'elle n'allait pas respecter la décision de la Cour suprême du Canada. Alors, je crois qu'il faut vraiment regarder si les droits constitutionnels veulent vraiment dire quelque chose, s'ils sont respectés en réalité ou s'ils ne sont que des mots écrits sur papier.

I am not saying not to use the court process. Since I work with the court challenges program it would be very strange if I said that. Trying to enforce constitutional rights in the courts is essential as a backup. It is a line of defence between us, the citizens, and in particular between us the disempowered and disadvantaged, and tyranny. But we should be able to do better than that.

As I said, even winning Constitutional battles in the courts does not mean they will necessarily be respected. As the francophone minority in Saskatchewan will tell you, things have not changed, even though they won. If you speak to aboriginal peoples across this country, they won in the Supreme Court of Canada in the Sparrow decision, which clearly said the federal government has a fiduciary duty to protect the interests of aboriginal peoples. Where is the constitutional role of the federal government in James Bay, for example, when they stand up in front of the court and say: "None of our business. We can't enforce any rights in this area"? Who is breaking the law in this country?

1130

How can we make the Constitution what it is supposed to be, a democratic document, a meaningful document. The process determines where you get. We have seen how badly the closed process worked prior to the patriation of the Constitution in 1982. Women, persons with a disability, aboriginal peoples were forced to take the process by storm because they had been excluded, and consequently their concerns had been excluded.

We have seen the appalling failure of the Meech Lake process, where the process was so bad that it excluded just about everyone in the country. Gambling in a closet is no way to run a democracy. It will destroy a country sooner or later, and we are seeing it happen sooner rather than later.

The Constitution puts forward the highest values of a country. Those values, the Constitution, the country, are not for a tiny group of politicians behind closed doors with their hand-picked experts to secretly decide and then hand down a fait accompli, particularly when they are in no way representative of the population of the country, in terms of their all coming, or almost exclusively, from the same background. I did not notice any women in that closet.

Amending the Constitution should involve participatory democracy. A constituent assembly would allow that participation. It should include proper representation of all the groups in society: women, racial and ethnic minorities, persons with a disability, persons who are poor, the elderly, lesbians and gays and others.

It should be set up at arm's length from government. A credible, independent agency or group should organize the constituent assembly. The constituent assembly would be provided with information papers and research documents to assist them in their discussions and decision-making so they can do an intelligent and competent job. They would address the kinds of questions you have put forward in your research document.

Quebec and aboriginal peoples would have their own parallel processes, shaped and decided by themselves. Quebec and aboriginal peoples must decide for themselves. Who could possibly pretend, in spite of the simplistic rhetoric from some quarters, that the will of English Canada can be imposed by force, by the army, on Quebec or on aboriginal peoples? Who seriously could pretend that? The bottom line is you cannot hold a country together by force.

What we need to do is discuss and put forward our own positive vision for the country, and perhaps have suggestions and ideas for how things might work well between ourselves and Quebec or between ourselves and aboriginal peoples. But above all, we must recognize their right to think through and put forward their vision. Then we must work positively and co-operatively to find a way, to develop a model, to innovate a relationship that works well for all of us. I believe that is perfectly possible.

The first thing would be to have a truly participatory process for ourselves. I do not mean a superficial process—this is not meant to be critical of what you are doing—like going around the country at great expense, asking people their view, offering a phone-in line or having a referendum. People need information to be able to truly participate. It is like informed consent. Consent on its own means very little.

Without necessary information, consent or participation can simply be a recycling of misinformation and bias.

Because they are not present in the decision-making processes of this country, most disadvantaged groups have worked very hard to become informed, to organize and to speak for themselves, to participate responsibly and democratically. That is a place to begin. We see sound, competent organizations across this country that have been there for many years representing disadvantaged groups.

With information and the means to come together, these groups can speak for themselves and participate effectively. We have had that experience at the court challenges program, where for the past three years we have brought together representatives of the whole variety of equality-seeking groups from across the country to work together for a number of days and share their ideas, information and experience on using constitutional rights.

It has been very impressive to see the level of seriousness, knowledge, solidarity and generosity displayed. Groups representing women, racial and ethnic minorities, poor people, persons with a disability, Quebec groups, children, aboriginal groups, prisoners' rights groups, lesbians and gays and other disadvantaged groups were present and shared in the discussions and in the consensus that came from those meetings. They have formed an ongoing network called the Canadian Equality Network to carry on working together.

Having had that experience three times—with virtually no funding, I might add—of a quasi-constituent assembly, I can say it was extremely successful, valuable, unifying and productive. Ordinary people really can be trusted, given half a chance. In fact they are quite impressive.

In addressing the questions raised in your discussion document, I would like to repeat that looking just at the words put into the Constitution is not sufficient. You must look at whether and how those words can be implemented in reality. Second, the views of the constituent assembly, the views of the Quebec process and the views of the aboriginal process would be the best ways to get answers to these questions.

I speak only for myself and I have not sufficient information to answer some of the questions raised. I took your paper very seriously. I have tried to answer all of your multitude of questions, but I do want to point out that these are just responses from myself, and I think responses coming from a constituent assembly and from aboriginal groups and Quebec groups would be most important. I would certainly want to listen to them. These are not fixed positions. These are starting-off discussion points from my personal experience.

Canada clause: Personally, I believe that a Canada clause would be a positive addition and should be included. It would say that democracy means the full, fair and effective participation of all members of society in the running of that society, and that governments in Canada will make every effort to bring such democratic participation into being, and in particular will take specific, positive measures to overcome the past discriminatory exclusion of disempowered groups.

The Canada clause would include the Charter of Rights, social and economic rights and the right of Quebec and the right of aboriginal peoples to self-determination. It would speak of multiculturalism, women, disabled persons, the linguistic duality of Canada and environmental rights. The Canada clause would affirm our values in a positive way. It could be used for public support and political pressure when politicians are being lobbied, usually in secret, by powerful interests to sell out on our values. It could be used in court as an interpretative directive to reinforce arguments in a particular case.

Multiculturalism, women and disabled persons: Canada's multicultural heritage and a commitment to equal respect for the many origins, creeds and cultures that shape our society, and gender equality rights and the rights of disabled persons should be recognized as fundamental characteristics of Canada in the Canada clause.

Equality rights in section 15 of the charter should include protection on the basis of sexual orientation.

Equality rights could be strengthened—you ask a number of times how the rights of these groups could be strengthened—in the Constitution by making it clear that positive remedies can be ordered to rectify discrimination.

Presently, the federal government is fighting in court against cases of disadvantaged groups to say that the only result you can achieve with your Constitution is to strike something down, to take it away, so that if women were denied a certain benefit that men had, all you could gain as a remedy from the court is that it would take it away from men, and then you would be equal. That is not a particularly meaningful vision of equality. It is like an equal pay case, saying that if a woman complains of discrimination in pay, we will lower the man's pay—no more discrimination. So the issue of remedy is an important practical one in the Constitution.

The Constitution should also make it clear that international human rights laws that Canada has ratified have the force of law in Canada.

1140

The Charter of Rights and social and economic rights: A commitment to the rights and freedoms of all Canadians should be recognized in a Canada clause as a fundamental characteristic of Canada. Parliament and legislatures should have the power to override rights and freedoms guaranteed in the charter, but only with a two-thirds majority. The override declaration should expire after three years. Equality rights in section 15 should not be capable of being overridden.

Social and economic rights should be incorporated in the charter. They should be similar to and refer to international covenants on social and economic rights that Canada has ratified. It should be very clear that they refer to the right to dignity and security of individuals who are poor and powerless, not the right of money to make more money, nor the right of the privileged to defend and increase their privilege. I think this is a very important danger that must be watched out for.

The right to an adequate standard of living, the right to housing, employment and employment conditions, health, education and social security should be included. These

social and economic rights refer to the basic dignity and basic survival of the poorest and most disempowered members of our society. If we are a decent society, they should not be limited. They should be enforced in the same way as other charter rights.

Aboriginal peoples: Aboriginal peoples should have their own parallel process to determine how they wish to be treated in the Constitution and how they wish to relate to the rest of Canada. I believe the inherent right to aboriginal self-government should be entrenched in the Constitution. I believe aboriginal peoples will have innovative and creative suggestions of how their vision and their self-government can co-exist in a positive fashion alongside ours. We have to listen.

The Yukon and the Northwest Territories should be allowed to determine for themselves what form of government they wish. They should be allowed to participate in all federal-provincial meetings dealing with the future of Canada.

Quebec's future in Canada and the roles of the federal and provincial governments: Quebec's right to self-determination should be recognized. A flexible approach should be adopted that is respectful towards the needs and wishes of English Canada, and the needs and wishes of Quebec. In reality, Quebec already is recognized as a distinct society in the way we operate as a country. This distinctiveness should be recognized in the Constitution.

Within English Canada, the role of the federal government to ensure national standards for social programs is very important. This is a basic value of us as a country, one of the things that holds us together that has enormous unifying support across the country: decent basic minimum social standards of health and education and social services. Concern that the federal government would no longer be able to play this role was one of the major reasons why equality-seeking groups were opposed to and fought against the Meech Lake accord.

The economy: The economic union of Canada should be strengthened in the Constitution. Equalization payments should continue to be the responsibility of the federal government and should be constitutionally entrenched.

Roles of the English and French languages: The linguistic duality of Canada should be recognized as a fundamental characteristic of the country in a Canada clause. The responsibility should continue to belong to the federal government, and should continue even if Quebec should separate.

National institutions and the political system: The Senate should be completely reformed or abolished. Different models or options should be put before the constituent assembly for consideration. If there is to be a Senate, it should be cut free from political patronage. It should be representative of all the different groups in society. The constituent assembly could perhaps name the Senate.

Process of constitutional reform: The legislative model should be supplemented by a constituent assembly model. The constituent assembly should decide what process should be followed for amending the Constitution.

Additional comments: As I have mentioned, words in the Constitution are not sufficient. Access to information, meaningful participation, open processes, power sharing:

These are key factors that determine whether constitutional rights in fact have any meaning.

Many countries have fine, ringing constitutions that signify very little. Let's not be one of them.

Practical elements that should be part of the constitutional package are:

1. A commitment by each government to consult affected groups before taking a position on constitutional rights in the courts. Each government's position and strategy on constitutional rights should be an open process with possibility of discussion and participation.

For example, the federal government right now is fighting equality rights in, constitutional cases in the courts. It is a closed process of decision-making. For example, the groups that we funded won an important case for native women, that they should not be sent to the prison for women, because they kill themselves; it is a death sentence. It was won, an enormous, wonderful charter victory under section 15. The federal government says it agrees, but what is it doing? It is back in court trying to turn it down. How come? We have many cases like that. When the government goes to court to use the charter, it should not use it against the people. People do not have the means to fight back.

2. An independent public fund for charter test cases should be created in every province. I think the court challenges program has been one of the finest things in this country. In other provinces, charter rights are being violated in flagrant ways and people cannot fight back. They cannot do anything. They do not have the means to enforce those fine-sounding rights written in the Constitution.

3. Effective access-to-information legislation should be put in place. When governments can keep key information from the public, as they presently do, constitutionally guaranteed rights mean next to nothing.

4. The process of naming bodies that are supposed to protect rights and be watchdogs of government must be kept free of political corruption and abuse and made independent and transparent. Presently, the situation of human rights commissions across this country is shocking, and it means that the commissions have very little independence or credibility. The government should not name its own watchdog. The process used by the court challenges program would be one possible model, where equality-seeking groups submit names of credible, qualified persons and an independent organization appoints persons from the names submitted. That is how the equality rights panel got named, and I am very proud of that.

5. Each government should have annually an accountability session in the Legislature and in a public meeting with equality-seeking groups and the public to examine how much progress has been made in implementing constitutional rights and increasing participatory democracy.

Also, the role of backbenchers and of parliamentary committees should be increased.

Last, the control of money over the political process must be checked. You have a situation, for example, in the United States, where you really do buy an election with political action committees. I think we have seen more of that happening in Canada, where vast amounts of money

can be used to buy elections. We have to stop that from happening.

The Vice-Chair: Thank you very much for a most interesting presentation. We have a number of speakers on the list.

Mrs Y. O'Neill: Thank you so much, Ms Ruff. You certainly said a lot of things I believe in. I believe one of the main roles of people like ourselves, people who have taken voluntarily the role you have taken, is to listen. That is an absolute bottom line, to be effective. I picked out a couple of things I wanted to say. I think your definition and explanation of "informed consent" is absolutely crucial. Other than that, we are being abusive.

I am very happy with what you say about the courts. This is really what I was trying to say earlier in my attempt to respond to the previous speaker, Professor Mendes. I am talking to the same one you are, the native women having won that court challenge and now, again, being turned around to fight it. This seems to be the case with many people's lives. I had a constituent in my office last Friday who has been in the courts for 10 years on the same issue. This is basically the 10 best years of her life, from 25 to 35, a lady not at peace. There is something wrong about that. It is a very small matter she is involved in, really.

I feel very strongly that you are telling us some pretty fundamental truths, that we have to see the Constitution as a document that serves, that is living, and is not just, as you say, words on a page. That is a terrific challenge, but people like you will help us.

I am very interested in your constituent assembly experiences. You say you have had some, but they were not really what you would legitimately call constituent assemblies in a formal sense, the way a province may think of this. I have done quite a bit of reading in the last few months, particularly on this whole concept, and it is much more difficult the closer and closer you get to decision-making. It is difficult in the choice of delegates. It is difficult in the veto or recommendations that may come forward from such groups. Could you tell me a little more about what you think can be some of the guidelines as it gets closer? I understand the aboriginals will be calling the things they are going to do with their women and elders and youth constituent assemblies or assemblies on the Constitution.

When we get to the provincial level, we are certainly going to try to have a conference here that is truly reflective of the province. As we begin that process—we are into it quite deeply right now, and to be fair, to be just, to be reflective is really taking all we have within us to make sure that happens. Even then we cannot be sure. We can only do our best. Could you offer us some guidelines if we do decide that is one of the options we want to look at seriously, and encourage the federal government to look at seriously?

1150

Ms Ruff: The experience we had was that we first made sure we were inclusive of all the different groups in society, and as much as possible allowed them the chance to select for themselves, shape the agenda themselves, and shape the speakers who would be coming themselves. I think it is very important that it be done independent of government and with the involvement of people who have

a track record of working with community groups that do not have a vested interest of their own, that have the credibility and competence to set it up.

We did it three years in a row. We had a national meeting of equality-seeking groups for three days, brought them in from every part of the country, native groups, aboriginal groups, all the groups I mentioned. A lot of people thought we would have a riot on our hands. We had no riot. It was enormously supportive and co-operative, with an enormous amount of generosity from groups, such as women's groups, the Women's Legal Education and Action Fund, which has had a lot of experience, talking with other groups where they could share and help them.

Out of those meetings we now have a number of different groups that have organized to have a voice. For example, there is a charter committee on poverty issues, where poverty activists from across the country are working together constructively around how to participate democratically in this country and how to try to use the Constitution and charter rights to mean something. We have a Canadian prisoners' rights network. MARC took its birth from that process, the Minority Action Rights Council that Mr Mendes is involved with. The Canadian Disability Rights Council was a group we worked with very closely to help it get going and speak for itself.

One thing that was very important in our experience was that the people organizing it or getting it going did not have a vested interest and were not trying to power control, but were trying as much as possible to let the affected groups choose who was credible in their eyes and participate in setting the agenda. At that meeting, where 50 or 60 people from across the country came, they were very interested in the idea of a constituent assembly and I think would be extremely willing to co-operate with any process or idea along those lines. There was enormous support for Quebec and recognition of Quebec rights. There was enormous support for aboriginal rights. It was not divisive at that meeting. What was so impressive was the co-operation that was shown. People did not feel threatened by Quebec's distinctiveness, did not feel threatened by aboriginal rights to self-determination, and wanted to help those groups be able to thrive and then to work more strongly together as a country.

Mrs Y. O'Neill: I think those kinds of efforts are absolutely essential, and I hope our conference will be such an effort. I do feel, though, that I have to remind you and ourselves that the reality at this moment in this country is that only politicians can work on this issue at the decision-making level, because that is the way the process is now.

I certainly think this committee has attempted to listen and to get as much input as it can. We have heard over 600 people. We have received literally thousands of exhibits and I think we have been quite attentive to those.

The only thing I can say is that things will change because of efforts like yours, I am sure. We all realize this Constitution has to have a credibility about it, and it has to be reinforced by the people it will affect. But the fact of the matter is that the Premier of this province and the premiers of the other provinces will have to do quite a bit of the speaking, at this point, on this issue. The biggest

thing we can do as a committee and that you can do as an extremely experienced witness is to make sure that Mr Rae, in our case, goes to these meetings in the best-informed way he can. That is why I feel this committee's work is so significant.

We know there would be one woman at the table if the meeting were held today. We know this committee does not have a majority of women on it. It would be almost impossible to do that. What I am saying is that I hope more and more women will take their responsibilities as seriously as you have taken yours in your leadership role. We are doing our best, I hope, to encourage women to do that. I thank you so much for your presentation. It has made a mark.

Mr White: I want to commend you for your presentation. I believe as well that it is important for the process to change, just as the Constitution must change. Along with Mrs O'Neill, I think it is important that we achieve a result, but I think even more so it is important to achieve it in a meaningful and healing process. I am very impressed with the issues you mentioned in terms of the Canada clause, the positive values you are stressing here, the values of democracy, participation, basic social rights. I just have a couple of questions.

First, you are suggesting that with this kind of Canada clause, with those positive values being accentuated and the adherence to international human rights laws, it would give some real, effective power to groups such as your own in court. I wonder if you could give an example from some of the things you have thought of or from other experiences in other communities of that kind of positive value being used in court, such as the right to basic housing or education.

Ms Ruff: At this point it is difficult in Canada. The international covenants are not treated as having the force of law in Canada, so we do not have a great deal of that experience, although sometimes in human rights decisions or charter decisions the courts have referred to international human rights law. I think we have seen in Europe how you can have a human rights document that then becomes enforceable in the different countries, so it is not something that has no real power behind it.

I am not saying the Canada clause is going to change the world at all, but I think it would be an opportunity to say some very positive and specific things about what we believe in as a country, and that it would have certain uses, such as being referred to to help interpret charter rights.

Right now, section 7 of the charter talks about the right to security of the person, and it is unknown at this point how the courts will interpret that. Will it mean that someone on welfare has the right to the basic minimum to be healthy? Does a child in Canada have a right to welfare support sufficient so that child's body can grow and it can have a roof over its head for its psychological security and health? We do not know. The chances are not that strong that the courts will interpret it that way. If the international covenants had a recognition and could be enforced in Canada, those international covenants very clearly spell out that security of the person does mean basic minimal standards

of health, housing, shelter and so forth. I think that would be very helpful.

Beyond that, I think we do need to look at ways to try to make these things enforceable. Mr Mendes's idea of the directives obviously is one option. I think the ideal way is—and this is what I am talking about, to some extent—rather than waiting till people are hurt and damaged, let's also try to open up the power process so that it is not closed. Let's take, for example, the federal government's cutting the equalization payments or its policy on aboriginal peoples. In our approach, if we try to open up the decision-making so governments cannot unilaterally use power in an abusive way, then maybe we could prevent the harm from happening first.

I guess I am a profoundly democratic person. I think the courts are really important, but I think a much better way is if we can have an open process with participation to stop the abuse, rather than going to court and saying the government is abusing these people.

Mr White: In your document you outline the problems a group such as your own faces with using the court process, and it is only through a collective group such as your own that you can pull together the funds you need for those kinds of challenges, whereas courts are typically abused to preserve the rights of money and privilege. In your conclusions you do not make a reference to empowering of groups such as your own to ensure that all parts of our community are represented in the court system. I am wondering whether you could have done that or for what reason you had not done so.

Ms Ruff: No, I could have been more specific on that. I would see it as being in my thinking at the bottom of page 7, where I am talking about bodies that are supposed to protect rights, and I would also include the courts there, that they should be named in a much more independent way to be much more representative.

I think the model that is being put forward in Ontario for protection of vulnerable adults is one where you are looking at a watchdog that is going to protect rights. It is being recognized and said, as I understand it, that instead of the government naming those people, the names will come forward from the groups, from the people who are at risk, so that people who are credible in their eyes will get named. I think this is part of having an open process. When those with power choose the watchdogs who supposedly are going to watch themselves, that is abusive, and that is what we see happening a lot in Canada right now. The court system should be a more open process.

As I understand it, in Ontario, writing to lawyers and asking them to put forward their names is making it clear that this is how this happens. Having a committee with involvement to help, trying to get a balanced representation, who is going to control this power? Is it just one tiny élite in society or is it going to be open?

There is an example on the opposite extreme. You have seen human rights cases across this country where there is a human rights case against the government, like in Saskatchewan and welfare discrimination, violation of the human rights legislation. The government gets to handpick

any individual in the province to hear the case. Lo and behold, those individuals do not find violations and do not order remedies and the government does not have to do anything. That has no credibility. That is a shameful thing in this country. It is very important that we stop this from happening. I think your point about the courts is a very important one and part of that.

Mr Drainville: I must say your comments and your presentation very much resonate with many of the feelings I have had myself. Over the last 10 years we have seen how the Charter of Rights has been brought into force, particularly in the area of equality rights.

I have a couple of questions to ask. One is in terms of social and economic rights. At present we have a situation in which we have a charter of what I would call middle-class rights. We have the right to worship as we please, we have the right of freedom of speech and we have the right to vote and a number of other rights, but they are middle-class rights. If you are poor, if you are a visible minority or if you are any one of any number of other groups in society, you are in a situation in which you cannot access many of those rights, by force of society and by force of the power structure which is in society.

That being the case we, or at least I personally perhaps in my own agenda, think it would be wonderful to see a situation in which we could establish and entrench social and economic rights that would be very specific and could provide for things like housing and food and opportunity for employment.

After hearing Professor Mendes today, I also go on to say how good it would be to have that entrenched within the Constitution as well as having the directives he mentioned. He is quite right to say having the directives would provide more concrete legal affirmation that these things had to be done, but there is a sense in which a constitution is greater than that, in the sense that it needs to embody the soul and the spirit and the aspirations of the people of the country.

On your quest to see these kinds of things happen, I want to affirm and say that these are absolutely integral to these discussions on the Constitution. If our country is going to move forward and if we are going to begin to have a vision of what we want to be as people in Canada, we have to be able to push these.

One of my concerns is about the language and making the system accountable to the language in the charter. You mention the Canada clause. It also would be part of the Charter of Rights and the social and economic rights. On the problem with the language, I remember I was recently involved with some native people who happened to have been trying to defend their land from some decisions governments had made. There were people in those court cases who raised the issue. At the beginning of the Charter of Rights it says that we Canadians believe in "the supremacy of God and the rule of law." That is in the Charter of Rights and Freedoms, but it is part of a very small preamble to it. That was not bought by the court, "We don't want to get into any of this stuff about the supremacy of God," and on the rule of law, "Yes, we'll deal with that, but we don't want to talk about the supremacy of God." Even though these words sometimes are in the text of our Constitution, we

have difficulty, by force of the system, the way the system works, in making people acknowledge the validity of those concepts.

In terms of the Canada clause and in terms of entrenching economic and social rights, do you have any ideas of how we can go about providing a structure whereby we could see these things adhered to by the system as it presently stands and as we are trying to change that system?

1210

Ms Ruff: I think we need specific laws or directives which spell things out in concrete terms and are enforceable to make those rights really mean anything, spelling out matters specifically, that people are entitled to sufficient income so that they can at least have basic needs met and housing available.

As I was saying, we have this section in the Constitution on equalization and regional disparities and about making progress towards those things, and yet we see that what is happening is the exact opposite. You have to draw the conclusion that having something inside the Constitution is not necessarily going to be very meaningful, particularly when you do not have participatory democracy, when you do not have people involved and aware and when you do not have accountability of the government to say, "This is a new policy we want to adopt and we're going to change that policy, that commitment in the Constitution," and so on and so forth.

You do not really have much of a democracy, in my view, if a right that is so seriously enshrined that it is written as a whole section in the Constitution can be thrown out of the window without anyone even being told what they think about it. I think that kind of behaviour on the part of governments—also like the example in Saskatchewan, which is not the only place that happens—where the government hand-picks the judge in a complaint against itself, where it hand-picks human rights commissions and human rights boards of inquiry, the ombudsman, the privacy commissioner and so forth, is profoundly antidemocratic and destructive of democracy and of the Constitution. The country will pay a price for that in the long term sooner or later.

You have the problems, you have the divisiveness, you have the lag. People have not bought into that because they never had a chance to even talk about it or know about it. I am offended by that and by the hypocrisy of a lot of politicians across the country talking about constitutional rights and how important they are and how what Quebec did was so terrible when, having worked in human rights for the past 20 years or more, where there are serious human rights violations going on by them in their province, they do not want to know, they do not want to talk about it and they do not care. The hypocrisy smells.

Mr Martin: I too, like everybody else who has asked you questions, am impressed with your presentation. For me everything in there is like motherhood. They are things we all certainly give lipservice to at one time or another and hope to see as the ideal we all go for.

I do not know whether you have any answer for my question. I become concerned when we somehow begin to see you and your folks out there separated by this gulf

from those of us who have been elected by you to govern, asking for something, and this obvious mistrust and cynicism. Probably a year ago I would have shared that, but now I am a politician and so I struggle with the image a politician has.

My belief is that we politicians work in partnership with those we represent to put in place things that are good for the country. When you bring forth issues so powerfully, like the ones you have here today, that speak to that actually not happening, when things like constitutions, instead of being freeing, uplifting, progressive things are sort of institutions that actually hold in check freedoms and take away from people rather than giving to them, that concerns me.

I share the concern about that whole process of how we involve the constituency out there in a meaningful way. You have talked of an example of yours. How do we, at a national level and a level here, bring folks together in a meaningful way with politicians? Certainly I look at myself. I am trying to be the best I can be. I am trying to be honest and responsive and caring as a politician. I would say I speak for all of us here when I say that and ask you how we might do that more effectively.

Ms Ruff: I want to make it clear that I profoundly believe in politicians and government and the democratic process. What I am saying is that politicians and government can use their powers in different ways. They can use their powers to make democracy less meaningful, to make it just a little cross on a piece of paper and allow money to be used to influence elections by allowing powerful interests to buy huge ads and stuff like that.

You can see very specifically, in practical ways, measures that can be taken that are antidemocratic, that keep the people out and in particular that exclude disadvantaged groups and people who historically have been discriminated against, and you can see measures that do the opposite. As I said, one of the measures for doing the opposite—I think that is one of the most uplifting things in Canada—is the model being put forward for the protection of vulnerable adults. I think that is one of the best things that has happened in this country. You see a government saying: "We're not going to close the power in and keep it behind closed doors for us. We know we'll be a healthier society, a more fair and democratic society, if we allow those experts in this, because they're the victims, to choose who's going to protect their rights."

I think having a conference, bringing together different groups in society to give them a chance to speak and listen to them, is really important. What I am saying is that what happened before with the Constitution in 1982 was against the will of the government at the time. They could have had the women there and listened to them. They could have had the disabled people there and listened to them. They could have had the aboriginal people there and listened to them. They did not. Those groups forced themselves into the debate, and the Constitution is a much better document because of it.

I hope I am explaining myself well. I am in no way putting down politicians.

As I said, and I think it shows, the court system is a check and a balance that has to be there, but that is not the ideal way. The ideal way is the political process. They are

not mind-boggling ways. These were just a few suggestions. I did not have enormous amounts of time to prepare this, I am sorry, so these were just very practical things that I am aware of that would make huge differences in a more democratic, participatory Canada, which would help avoid conflict and injustice and divisiveness.

I think the kind of consultation that often takes place that I have seen over the past 20 or so years usually is very superficial and you are not allowed in the discussions. With all the groups I have belonged to, we have worked very hard and I think had a lot of very intelligent things to put forward in areas we knew something about, but it virtually never happened. It rarely happened that governments really wanted to sit down and listen to you, rather than go through a superficial process. I think politicians and governments that really do want to listen—that is all I am saying. I am not trashing politicians at all. I really am not. I profoundly believe in the political process.

The Vice-Chair: Thank you for your faith.

Mr Grandmaître: I think she is the only person who really believes this. You should not be bashing politicians.

Madame Ruff, j'ai été impressionné par votre présentation, vos idées. Vos commentaires reflètent très bien votre vaste expérience de travail avec des groupes désavantagés. J'ai été, je ne veux pas dire «surpris» mais, par contre, je voudrais développer, si vous voulez, ou mieux comprendre vos idées en ce qui concerne l'assemblée constituante.

I think you have pointed out that participation, communication, information, are so important. It is vitally important for us to really understand what goes on in our own country. I think Meech Lake was a perfect example of lack of communication and information, and from the failure of Meech Lake, political groups, such as the Confederation of Regions party and the Reform Party, le Bloc québécois, tous ces gens-là, were created because of their total dissatisfaction with our process.

I would like you to enlighten me. If we were to have or create a constituent assembly in Ontario or right across Canada, how would you decipher or cipher the proper information to be delivered to Canadians in order that they would make the right decision, and would that decision be made through a referendum after communicating with, informing, all of these people?

1220

Ms Ruff: I think that having some prepared research and information is vital prior to a meeting of a constituent assembly, just the same as yourselves or anyone, if you are going to do a proper job, you have to first have the information and read it and listen to some people with some particular expertise and be well informed as you go into your discussions.

I think there are many areas where people can provide that information, who are not speaking for the government or for any particular group but have credibility, have expertise, and their ideas can be put forward. Obviously Mr Mendes is one example. There are plenty of others.

Our experience with our national meetings of equality-seeking groups is that we consulted them for resource people—who they would like to prepare papers, who they

would like to be on a panel and so forth—and circulated the ideas among everyone and came up with a certain number of people. There was a lot of interest. The people wanted to hear those people, receive that kind of information that was basic to them.

I think there is no problem with that, and it does not all have to be information that is one view. It is a variety of views, a variety of options. I would imagine that people might like to have some information from Quebec or from aboriginal peoples as well as from English Canada, some experts or some people who have done some work from those backgrounds, and be looking at that variety of information to help them in their discussions.

Mr Grandmaître: You did say from a variety of groups or individuals and this would be communicated back to the total population. With the experience of Meech Lake, or the failed Meech Lake accord, do you think people would still have confidence in provincial governments and the federal government? Do you think people have lost faith totally now? Can we regain this faith?

Ms Ruff: I think one of the good things about the idea of a constituent assembly is to bring some momentum in a positive way and in an informed way so that people can come together with representatives of all the different variety of groups in society and be putting forward ideas that are positive ones as to how we wish to go forward as a country, not to have something imposed on them out of the blue, not just to have a phone line in where you really have not had a chance to become informed before you participate. I think that would create, outside of the constituent assembly, media coverage and interest in the general public. I think it has to be carefully thought through to make it go forward in a positive way.

As I say, when we organized our meetings, we had one speaker in, Catherine McKinnon, from the United States, who has done a lot of work on equality rights, and people were interested in what she had to say. One of the things she said was that there has never been a meeting like this, ever, in the United States.

I think it was very important, and I think it rarely happens, to bring together people representing all the different backgrounds and to give them a chance to work together in an environment that is positive, that gives them some intelligent material to work with and to come forward with proposals and suggestions, an open process that will be educational to the general public at the same time.

Our experience was that it was a very positive experience. There was not a breakdown and fight in rivalry among the different groups. There was not hostility and division between Quebec and the rest of Canada, or aboriginal and non-aboriginal. There was a real wish to listen and learn of the concerns of all of the groups and to try to come forward with ideas that would work well for everybody.

I think we want to start talking as positively as we can. We have so much going for us that is so wonderful as a country. What we are talking about is trying to have a more effective, true, democratic participation and trying to achieve in reality some justice in this country. So it is a positive challenge, I think, to make Canada better, but we

do not say that very often. There are a lot of positive feelings in the rest of English Canada towards Quebec as to how wonderful Quebec is. I have lived and worked in Quebec quite a lot and I have worked with francophone groups quite a lot. The plus that it brings to us as a country in terms of their vibrant culture and excitement and liveliness is an extra wealth of strength of knowledge, linguistic and cultural and so forth, in the world. It is a plus.

Aboriginal people, in their knowledge and their wisdom and their role model and their values, again are a plus for us, and I think we need to try and set up environments like this that are going to be very positive in affirming us as a country. We have not had that. We have had very divisive processes used.

The Vice-Chair: Unfortunately we have run over our time by some 10 minutes, but I think most members were interested in what you had to say. You said in the beginning that you did not take a lot of time in preparing your submission, but I think the 20 or 25 years you spent in your background certainly showed in the presentation you gave before this committee today, and for that we thank you.

With that, we will adjourn the committee until 2 o'clock and until then we stand in recess.

The committee recessed at 1226.

AFTERNOON SITTING

The committee resumed at 1406.

The Vice-Chair: The committee will come to order. Again, we would like to welcome viewers who are watching the proceedings of the select committee on Ontario in Confederation. We are coming into the last part of the first week of our hearings, where we are soliciting the views of various constitutional experts, answering specific questions we had given to them before coming, as well as groups coming to make representations to our committee, and also following up on the work we had done on our first part.

COMMITTEE OF PERSONS WITH DISABILITIES
ON THE CONSTITUTION

The Vice-Chair: We have today with us—and I will let them introduce themselves—the Committee of Persons with Disabilities. For the people who are presenting, I will just introduce myself. My name is Gilles Bisson. I am the Vice-Chairman of the committee. We have on the government side, Mr Drainville, Mr Winner and Mrs Mathysen. With the Liberals, we have Mr Grandmaître. With the Conservatives, we have Mr McLean and Mr Villeneuve. If you would introduce yourselves and make your presentation to the committee, you have approximately an hour.

Mr Nikias: My name is Angelo Nikias. I have been asked to chair the Committee of Persons with Disabilities on the Constitution. I would just like to name my colleagues who are here with me today: Dick Santos, Carol McGregor, Hugh Scher, Liz Stimpson, Richard Decter, Sam Savona and David Baker, our legal counsel.

First of all, I would like to thank you for giving us this opportunity to come and discuss with you our concerns in respect to the Constitution. We are really responding to the call that you made earlier this year for public participation. We have a brief which I understand was distributed yesterday to all the members of the committee. If anybody needs a copy of the brief, we have additional copies here. What we would like to do is highlight our brief and then answer questions the members of the committee may have.

Is there a need for copies of the brief?

The Vice-Chair: Yes, the clerk is making copies, which we will be getting shortly, so you can go ahead with your presentation.

Mr Nikias: One of the most important social phenomena of the latter half of our century, I think it can be said, is the emergence of the disability rights movement. The disability rights movement is the main political vehicle by which persons with disabilities are striving to remove the barriers which hamper our participation in all aspects of social activity. The problems we face are problems like difficulties in employment, human rights violations and inadequate education and training. We have tried to address these problems by working together on a cross-disability basis; in other words, persons with various disabilities coming together, identifying the problems and trying to come up with solutions and put them forward.

This method of cross-disability has been effective in all the areas that I have mentioned, but I think it could be most effective in the area of constitutional reform. This is really the reasoning behind our work together and our presentation here today.

It is also important to say that we view our efforts for inclusion in society as part of the broader equality-seeking movement. For that reason we support the protection of persons with disabilities against harmful discrimination on the basis of other grounds which are not listed in section 15 of the Charter of Rights and Freedoms.

We are very well aware of the implications constitutional decisions may have for the lives of persons with disabilities. Therefore, in addition to the comments we are going to make below, we would like to express support for the idea of a constituent assembly as advocated by the Ontario government. The reason for our support is that the convening of an assembly has advantages over other proposed approaches. The main advantage, of course, is that it provides more opportunities for Canadians to participate in the reform of the Canadian Constitution.

Participating in this debate as broadly as we can is very important to us, very important to people with disabilities, because many of the problems we have faced in the past and are facing still today result from the fact that we have been excluded from decisions that affect our lives. So we have come here today with very specific proposals responding to your request for public participation.

Now I will turn it over to my colleagues to discuss the proposals specifically. I will ask Carol McGregor to speak to some of our proposals.

Ms McGregor: We want to discuss with you a little bit about the equality and a bit of background on it. When Pierre Trudeau was pushing for the Charter of Rights and Freedoms so that he could entrench bilingualism, he quickly recognized that the public would support the charter only if there was a strong equality clause. Human rights codes and efforts to stop discrimination had broad public support.

It has been well documented that women have played a prominent role in defining "equality" and were successful in having gender equality given special status under the charter. Persons with disabilities had a basic concern. We had to fight just to be included among the protected groups which were guaranteed equality. Once that battle was won, there was no opportunity to ensure that equality was defined in a way that reflected our own needs.

The specific reform we would like to make under that term, "equality," would be under the rights respecting the inclusion of persons with disabilities. Under section 28.5, we would like to state that:

"(1) The amelioration of the conditions of persons with disabilities can best be achieved by their inclusion in the social, political and economic mainstream through the removal of barriers;

"(2) A barrier review should be conducted every four years by both the federal and the provincial governments for the purpose of designing and introducing legislative

packages aimed at achieving the objective of inclusion stated in subsection (1)."

The rationale for this is as follows:

1. The members of the advantaged group should not be able to claim equality protection. Only individuals who are members of disadvantaged groups should be able to assert equality rights under subsection 15(1). This would be ensured by the adoption of the proposal above.

2. This change would adequately deal with claims of reverse discrimination and preclude the negative interpretation of the current subsection 15(2).

3. Section 28.5, above, identifies the equality goal of persons with disabilities as "inclusion in the social, political and economic mainstream through the removal of barriers." This rectifies an omission from the 1982 process where disability organizations were fighting merely to gain recognition for their concerns in the Constitution. People with disabilities are the one group among employment-equity-designated groups—the others being aboriginal persons, women and members of the visible minorities—that does not have this type of recognition.

4. Constitutions are more successful at guaranteeing individual rather than collective rights, because collective rights are harder to enforce in the courts. Nevertheless, there are possible strategies capable of confronting major barriers which exclude persons with disabilities. The model of employment equity should be used to impose a charter obligation on governments. All levels of government should be obliged to periodically conduct barrier reviews, develop plans and introduce legislative packages designed to move towards the goal of inclusion. This would not impose an obligation to achieve specific goals, as would subsection 15(1), but would create an opportunity to communicate regularly with government on a cross-disability basis. It would facilitate positive, incremental change over an extended period of time.

The proposed amendment to the Charter of Rights and Freedoms, as well as the enhancement of the equalization payment provisions which will be outlined below, reflect our position that the Constitution should, in addition to protecting individuals against unreasonable or inappropriate state encroachment, provide affirmatively for the amelioration of conditions seen to be the cause of disadvantage. In relation to persons with disabilities, this principle would require the gradual but definite removal of barriers to our full participation in the mainstream of Canadian society as a whole.

I am going to ask Dick Santos to talk about our problem with section 15.

Mr Santos: I am just going to highlight the problems around subsection 15(2). I will not go into all the citings of cases, etc. David Baker will be speaking about the remedies.

When 15(2) was suggested and adopted, I, as a disabled person, had a great deal of fear about what could come out of the affirmative action idea where the Constitution could be ignored in relation to programs which are supposed to be affirmative action programs to further the integration and further the betterment of disabled people. My immediate and gut-level reactions have come to pass, have been proven correct.

The fact is that in Ontario, for instance, the assistive devices program for disabled people, the blind and visually impaired has an age limit. This has been upheld and the program has been upheld as an affirmative action program. If you keep getting older, you never reach the age that you are eligible, correct? You never double back on yourself.

There is the situation of good intentions, where in a small town in rural Manitoba they might run one bus that is accessible for people in wheelchairs and the court can say they have made the effort, so we should not have a total accessible system.

These are the kinds of problems that arise out of 15(2) and I just give you these couple of examples. I do not want to go on and on, because I think it is much more important to focus on the solutions than the problems, although you have to understand the problems to begin with.

I am going to ask David to take over now.

Mr Baker: The objective underlying subsection 15(2) was that in Canada it was accepted that arguments that something which ameliorated the conditions experienced by disabled or disadvantaged people was not to run afoul of the equality clause or was not to be a case of reverse discrimination and struck down on that basis. Unfortunately, 15(2) was worded in such a broad way that a far greater net was cast than was necessary to deal with the problem of reverse discrimination.

The equality theory has moved from the point of being theory into reality and the Supreme Court of Canada has reached a number of important conclusions about the purposes underlying 15(1). They have said that equality under the Human Rights Code and the Charter are fundamentally the same. They have stated that the relief of disadvantage experienced by specific groups such as disabled people was the purpose underlying section 15. They have said that only members of disadvantaged groups can expect to rely upon section 15. Finally, they have pointed out that equality includes a duty to remove systemic barriers by accommodating the special circumstances of disadvantaged groups.

1420

The court has done a great job at the Supreme Court level of interpreting 15(1) in a manner which is consistent with this idea that reverse discrimination is not a problem under 15(1).

However, we are concerned because of a number of lower court decisions, as Dick has mentioned, about misinterpretations of 15(2), and we are concerned also that the members of the Supreme Court of Canada have undergone a major transition, particularly over the last year or two, which could result in more conservative interpretations of 15(1) and, hence, broader interpretations of 15(2) than we feel are consistent with the intentions expressed back at the time when the charter was being implemented. We feel this is an important time to be bringing forward a revised 15(2) for consideration.

If you look at the top of page 4 of our brief, you will see the wording which is suggested, a simple statement that: "In order to ameliorate the conditions of disadvantaged individuals or groups, the use of subsection (1) is limited to those who are members of disadvantaged groups."

In presenting that, I would remind you, first, that it addresses directly the issue of reverse discrimination which was the purpose underlying 15(2). I would point out also that it is entirely consistent with the trilogy of Supreme Court of Canada decisions under subsection 15(1). Our concern is to reinforce those rulings and prevent the broader interpretations which are being given to 15(2). Rather than go through those again, I leave those if there are questions to be discussed in detail at that time.

The next person to be speaking to you is Hugh Scher, who will be addressing the issue of social programs.

Mr Scher: I would like to begin by addressing the federal structure of our country.

In the preparation of this brief we have consulted widely with the leadership of the disability rights movement in Ontario and across Canada. The consultation has led us to conclude that Canadians with disabilities believe the protection of disability rights in the charter must be strengthened.

Furthermore, we believe that enhanced protection for disability rights is viewed as an integral part of a wider picture, a picture that amounts to nothing less than a vision for this country. This vision would include the fact that Ontarians with disabilities ardently desire a united Canada, one where, while individual liberty and self-actualization are maximized, collective social responsibility is valued and enhanced.

Ontarians with disabilities believe the principle of a united Canada is not incompatible with the desire of certain collectivities to retain their own cultural identity. In this respect, we recognize the right of the aboriginal peoples and the people of Quebec to self-government and self-determination respectively. We think this approach is more consistent with our own position that treating everyone the same, regardless of particular circumstances, is not treating everybody equally, and in fact is often a way of perpetuating conditions of socioeconomic disadvantage.

Indeed, to paraphrase our former Chief Justice Brian Dickson in the case of *Regina v Big M Drugmart*: "What may appear good and true to the majority, or to the state acting at their behest, may in fact represent the tyranny of the majority. The interests of true equality may well require differentiation in treatment."

Not only are Ontarians with disabilities in favour of a united country in general; they stand for a strong federal government, a government which is capable of providing effective leadership in matters of national significance. This position, of course, is rooted in our historical experience, which suggests that the federal government has played a positive role with respect to either the initiation or enhancement of services which critically affect our wellbeing as Canadians. In particular, we hold the view that the government federally is the only Canadian institution which can effectively provide persons with disabilities across the country with equal access to the social programs we need.

A little background about the social programs and our concerns and suggestions for improvement in this regard: Across the country, people have made it clear consistently that they feel social programs such as medicare are indeed fundamental to their identity as Canadians. At the same

time, some provinces, Quebec in particular, object to the intrusion of the federal government into areas of exclusive provincial jurisdiction. These concerns have become more widespread following the federal government's announcement recently, in the last few budgets, that it will be withdrawing its financial contribution towards the cost of these programs, while at the same time maintaining its intention to impose national standards in any event.

It is important to recognize as well certain facts. Canada's spending on health care services, primarily doctors and hospitals, is among the highest in the industrialized world. However, our spending on social services, such as preventive health programs, welfare, housing, etc, is among the lowest. The net result is that Canada's overall social spending is about average for an industrialized country, lagging far behind such countries in Europe as Germany and Sweden and just marginally better than the United States.

We believe the government could be an important ally for Canadians with disabilities. A Constitution which protects disabled people from government only does half the job. Canadians with disabilities are seeking constitutional recognition of a right to have social programs which are comparable from coast to coast. We believe the only way this can be achieved is through equalization payments. I will now address the question of equalization payments and regional disparities.

Section 36 of the Constitution Act deals with equalization and regional disparities:

"(1) Without altering the legislative authority of Parliament or of the provincial legislatures, or the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the government of Canada and the provincial governments, are committed to:

"(a) promoting equal opportunities for the wellbeing of Canadians;

"(b) furthering economic development to reduce disparity in opportunities; and

"(c) providing essential public services of reasonable quality to all Canadians."

"(2) Parliament and the government of Canada are committed to the principle of making equalization payments to ensure that the provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation."

These are indeed lofty phrases, and the problem we face to date is that to a large degree they have not been put into action. Indeed, during the current federal government's term in office, many of the payments towards these services have been cut substantially.

If there are to be truly national social programs, as ardently desired by the majority of Canadians, the fundamental issue is the provinces' financial ability to pay for them. National standards, unaccompanied by the financial means to meet them, are merely hollow promises which offer people with disabilities, particularly those in have-not provinces, no realistic hope.

In light of this, we would propose the following reform. We believe this is consistent with the Group of 22 report

and its recommendations, which you will find in the supplementary material, as well as with Quebec's position in the Allaire report, which is also in the supplementary materials.

The wording of the reform that we would urge the government to support calls for the enforcement of section 36 and reads as follows:

"(3) Any person adversely affected by the failure of a provincial government to provide a comparable level of social program, or of the federal government to make equalization payments which ensure the province can provide the program at a comparable level of taxation, may make application to a court of competent jurisdiction to obtain such remedy as the court considers just and appropriate in the circumstances."

The reasoning for this is evident, but I will outline again some of the major concerns we have which led us to this means of reform. First, by making section 36 enforceable and by keeping it where it is in section 36 under the Equalization and Regional Disparities section, as opposed to in the Charter of Rights itself, we believe it will not be subject to the "notwithstanding" clause in the charter in section 33 or to the "reasonable limits" provision in section 1 of the Constitution. Indeed, it is also consistent with the statutory scheme of the Constitution Act, 1982, and section 36 in particular.

The focus on social programs moves away from the idea of public services in general and reflects the priority attached to these programs by Canadian people. The proposal does nothing to interfere with the exercise of the federal spending power or with the exercise of exclusive provincial jurisdiction. It does give priority to equalization and thus enables provinces to exercise their jurisdiction in an equitable way. The government federally would still be free to impose national standards through cost-sharing agreements with the provinces.

We believe and hope this proposal will be satisfactory to Quebec, which in the Allaire report recognized equalization as a legitimate role for the federal government. Indeed, the need for national standards may be reduced because the standards of comparability will be achieved through transfers from have to have-not provinces.

In essence, the proposal represents a new bedrock of equalization which the federal government could not unilaterally discontinue. This is the spirit which we believe will truly bind us together as Canadians.

1430

Mr Nikias: The involvement of persons with disabilities in the constitutional reform process we think merely complements the barrier-removal initiatives at the federal and provincial levels, which are designed to advance our goal of barrier removal. In pursuit of our constitutional objectives, we seek the support of all members of the Ontario Legislature. Successive Ontario governments have shown leadership in pursuing social justice and national unity. Therefore, we trust that the current government will champion constitutional proposals which further safeguard or enhance the rights of persons with disabilities. To this end, we request that the select committee on Confederation join with us in requesting that the Premier place these

proposals on the constitutional agenda during the upcoming premiers' meeting in British Columbia.

Mr Drainville: Thank you very much, Angelo. I met you recently when we were discussing some issues around human rights, and I am glad to see you here before the committee again. I would like to ask for a background viewpoint on the proposed reform, subsection 36(3). The bill the House of Commons was dealing with recently, C-69, has to do with the Canada assistance plan. In the context of what you are presenting before this select committee, how would you view that particular legislation?

Mr Baker: What we are trying to say is that there needs to be a new approach to social programs which does not interfere with what we have now. Certainly C-69 interferes with the underlying principles of the Canada assistance plan as we have known them for decades now, and it obviously had a major impact on both the current government and the previous government in terms of their planning in the area of social assistance.

The point we would make—and we are making this as representatives of disabled people across the country; Angelo will tell you this brief has been endorsed by the Coalition of Provincial Organizations of the Handicapped nationally—is that the Canada assistance plan was based upon the principle of one dollar from the province matched by a dollar from the federal government. There were obvious advantages to that arrangement to have provinces. What we are saying is that we need to confront the issue of equalization as the fundamental issue. We are not disputing nor would we seek to change the ability of the federal government to enter into those kinds of cost-sharing arrangements with the provinces. Indeed, we would encourage that, and we would encourage the federal government to continue to show the leadership in initiating new programs such as day care and others which it has the capacity to do under the current constitutional arrangement.

What we point out, however, is that under the current Canada assistance plan and its companion document, the Vocational Rehabilitation of Disabled Persons Act, provinces like Prince Edward Island have virtually no programs at all for disabled people. We find that having disabled people in PEI living in Third World conditions while we in Ontario, at least up to this point in time, have been fortunate enough to have somewhat better programs means that we have not confronted the fundamental issue yet.

That is why we are saying we need to confront equalization. Our belief is that it will make Quebec happier, because it will mean there is not such a great need for federal intrusion into provincial areas of jurisdiction, because we will be confronting this issue of equalization without the federal government dictating to any one province what it should be doing. That is our hope.

This is something we should have done and we have not done. There have been equalization payments over the years, but it is a relatively small proportion of the transfers between the federal and the provincial governments. We would like to see that substantially increased so as to recognize the regional disparities that exist within the country. It

may be that Ontario will be a have-not province some day. We all hope not, but we have to be thinking that way too.

Mr Nikias: I think a couple of my colleagues want to add something.

Mr Decter: I am Richard Decter from Persons United for Self-Help in Ontario. I just wanted to add something. Under the current arrangements, despite the wealth of Ontario, 60% to 80% of the people in Ontario with disabilities are unemployed, 50% of adults have incomes of less than \$10,000 a year, and 225,000 people live in institutions of various kinds, and I am not talking about prisons. If that is the situation in Ontario, I think you can imagine what the situation is like in a province like Newfoundland or in the other poorer provinces. That is why we feel both the equality provisions and the equalization provisions are important.

Mr Scher: I think it is also important, in light of the question you asked about Bill C-69, to look at Bill C-28, which the federal government has brought forward in the last session. I believe that is a significant detraction and regression in terms of the federal government's commitment to living up to its end of the bargain and paying for social programs. I think it encapsulates the idea we are talking about: that if we leave the jurisdiction with the provinces—as it is, these social programs are exclusively provincial jurisdiction—and simply allow the federal government in this way to ensure its payment and commitment to them through equalization, we will not run into the sorts of problems that are being discussed right now with regard to Bill C-28, whereby money from social programs will be dumped into the health care field, thus detracting from those other social programs. There is no question of the importance of health care, but we cannot at the same time take away from the rest of our social network in order to maintain the health care payments we are paying across the country as well.

Mr Drainville: I would like to ask a brief question. In terms of allowing an individual to take the provincial or federal government to court, what section was that again?

Mr Baker: Subsection 36(3), at the top of page 8.

Mr Drainville: In terms of taking the governments to court, I am intrigued about this because certainly one of the problems that has been stated here before the committee and also in terms of other groups who have been discussing equality rights is the reality that we have many provisions presently in the Charter of Rights and Freedoms that indicate there are rights for people, yet when we try to access those rights we are having difficulty in the courts doing that. What I see you doing here is trying to provide a mechanism whereby, when there is an act of a government, provincial or federal, which detracts from the support and the access that disabled people need, there will be recourse to use the courts to try to redress that. Could you talk a little bit about how you came at that issue and how you formulated the particular section?

Mr Scher: I think you have touched on the heart of the issue. There are a lot of academics out there who are debating the question of whether section 36 is enforceable. I have spoken with many of them who have written papers

on the subject, but the practical reality is that it has not been used in the courts.

If you look at the first drafts of section 36, it was originally enforceable. In the first draft of section 36 that came out there was an enforcement clause within it. It was removed in the later drafting of the section, before it was implemented. I do believe, certainly theoretically, that there is a tremendous potential to implement section 36 in the courts. What this will do is clarify that intention and indeed provide that mechanism explicitly rather than having it as part of a theoretical debate.

1440

Mr Winner: My question for Mr Scher also deals with your proposal to amend section 36. I find the recourse to the courts a very attractive feature. I do express a concern, however, given the present makeup of our courts of Canada and the lack of people with disabilities on the bench. I think you might agree that a lot of work needs to be done to reform the method by which we are selecting our judiciary, to ensure that it does not become a hollow right: that when you exercise your recourse to the courts you are exercising your recourse to a court that is representative of society at large and certainly the disabled sector.

Mr Nikias: If I understand your point to be that we need more persons with disabilities on the bench, I absolutely agree with you and I urge you to move forward.

Mr Winner: The other observation I would make is that you may be in a position where you are asking the court to make decisions that are normally made and should be made by the governments that have failed to make them. Perhaps that is why there is some doubt as to the enforceability of that section. Too often, in my experience, the courts have refrained from exercising judicial power because they feel it is a matter for government.

Mr Scher: I would agree with that. Of course, the political questions doctrine in the United States has led the courts in many instances to stray away from hot political issues.

The shared-cost mechanisms are still present. There is nothing to prevent government from taking the steps that are required in order to ensure comparability of services across the country. What we are saying is that in the absence of that, we are going to provide another mechanism whereby individuals can bring their concerns to the court for redress. We are not taking away any of the authority of government to continue negotiating shared-cost agreements and agreements that will ensure comparability of services across the country. In fact, we are encouraging that and we are obviously hoping it will be the case.

Mr Baker: I think the point of subsection 36(3) is that it is enforceable and does not leave the degree of judicial discretion that you might be concerned about. The issue of comparability of levels of social programs is essentially quantifiable, and that is done now both within the country as between provinces and, as we mentioned in our brief, internationally by the OECD, which is comparing levels of social programs between countries, which is a much more difficult exercise than would be required here.

In terms of comparable levels of taxation, it is simply a mathematical formulation to take the cost of the social

program, the tax base in the province and the level of taxation in the province to be able to assess what the cost would be. For example, we know that in Ontario the cost of medicare is about 7% of the gross national product and in Newfoundland it is 13%. That is the kind of thing that concerns us. In Newfoundland the net effect is that there are no social programs for disabled people because everything has gone into medicare. That is the kind of concern we have here.

We feel this is something the courts could not fail to enforce. That was a double negative. The courts would enforce it. It is something that can be calculated and presented and would not require a great deal of resources on the part of the disabled community, for example, to have this kind of issue brought forward before a court. If a province fell below the level of comparable standards, then it would be enforceable against the province. If the federal government failed to provide the equalization payment due to that province, again, that would be readily identifiable.

Mr Winninger: You have provided a great deal of reassurance, but let us not forget the impact of section 1, which may water down that right where it is considered reasonable to do so politically.

Mr Nikias: Our goal generally is not to minimize the role of democratic politics. We still view the political decision-making process as the main one, but what we are proposing is a defence, in a way, against actions which minorities have no other way of defending themselves against. This is really the essence of what we are trying to do.

Mr Scher: I would add to that, if you look at the rationale's point 1 on page 8, the placement of subsection 36(3) outside the Charter of Rights and Freedoms removes it from the effect of section 1 of the charter, so there would not be any cause for concern in that regard.

Mr Winninger: I see what you are getting at. Thank you.

Mrs Y. O'Neill: This is an excellent brief, and challenging certainly. I feel you have tried to grapple with the important issues, the distinctions and the possibilities.

I wanted to be as honest with you as I can about our committee and what we are mandated to do. To be honest with you, I do not think we as a committee can influence the Premier when he goes to meet in British Columbia. I am sure he keeps very close touch with what we are doing, but our final report is to come in November. When he goes there, which I think is at the end of this month, we will still be in our hearings. So there will be no formal recommendations other than our interim report, but I am sure that briefs such as yours which are very directed and focused will be within his hand when he goes.

But I do not want you to think that because you do not see a communiqué to this effect we are not going to attend to your concerns. It is a legislative committee you are talking to, and our recommendations, if they be such, will be after these hearings and after our conference in October. I wanted you to be clear about what our possibilities are, and our Chairman today may want to say more about that.

That having been said, I wanted you to please help us a little more. When you introduced your brief you talked

about the idea of a constituent assembly. This is definitely something we have to grapple with. It has been said to us as early as our first couple of days of hearings last February and it has certainly been said to us more often this week. We have talked about it among ourselves, although certainly not in any focused manner of forming a recommendation on it.

What I would like you to do, if you could, is grapple with the issues that have to be grappled with when you talk about a constituent assembly. How do you choose delegates? How do you develop an agenda? What kind of voting rights are there, and are there any veto powers? Basically, to this point, in this country, constituent assemblies have been the legislatures of the provinces and the Legislature of the House of Commons.

This whole new concept is developing out there of the constituent assembly, and as it gets closer and closer to the centre of decision-making, it becomes harder and harder to pull together. As we developed our conference agenda, which has some of the characteristics, we are finding that it is very challenging for us to be fair, to be representative, to mirror Ontario.

I really want those people who are outside this committee, such as yourself, who have looked at this issue, maybe even experienced something like it, to try and help us understand how you feel we could best think about this in a way that would be positive.

Mr Baker: In terms of mapping out in precise detail what a constituent assembly might consist of, I think that is beyond what we have achieved to this point in time. You have been candid with us, and I think we would want to be candid with you about that.

Our fundamental concern here comes from the perception that was popularized with the reference, in the context of Meech Lake, to the 11 white, able-bodied males going into a room and coming out with the solution to everything. The view is that the democratic process is important and we would like to see and we believe that a constituent assembly should be viewed from the perspective of reinforcing the democratic process.

1450

However, one clear reality of the democratic process, and the reason why there is a section 15 in the Charter of Rights and Freedoms, is that a majoritarian process does tend to leave out important minorities within the community. So the view was that a constituent assembly provided a mechanism to ensure representation of those minority interests, including the interests of disabled people.

To the extent that is helpful, and I do not think it is very, to be honest, that is where we are coming from. We are saying that historically, disability issues have been broken up disability by disability and so the political clout the disabled people have had has been extremely minimal because everything has been done on a disability-by-disability basis. At this point in time, the structures within the disabled community are such that people are operating on a cross-disability basis and proposals such as these can be brought forward. There are mechanisms for people like Mr Nikias here to come in at the provincial and at the national

level as well and truly say he represents disabled people across this province here today and next week he will be speaking on behalf of disabled people across the country. That kind of representation is felt to be important in this process.

The other point we would make is that we have not gotten very far with the traditional structures and that is why people are reaching for new solutions. The tradeoffs, the scenarios, the law professors, the constitutional advisers, the Premier's staff and so on have created certain logjams, and everybody knows where everyone else is coming from and everybody has issued their threats and everybody knows where everybody else is going. The feeling is that through this kind of a process some new agenda items might come forward. Certainly our intention with this brief is to bring these to you, and we hope that, whatever mechanism is ultimately selected, some new proposals will be brought forward which might unjam the logjam.

I think that is where we are coming from, the desire for a voice and to be represented at the table and a desire to see new solutions brought forward which are an attempt to respect and understand where the province is and the federal government and where the traditional advisers they have been relying upon have been coming from, but to bring some new ideas that might help bring the solutions.

Mrs Y. O'Neill: Certainly ARCH's publication indicates the cross-disability communication. I think it is extremely helpful. PUSH is certainly making its points, I think, very clearly, and today is a perfect example.

I think in trying to answer the question you realize how difficult it is going to be for us to break the logjams. I do not think we should throw up our hands and say nothing can be done. I think those of us who have the responsibility at the moment have to find ways to do that, and we will certainly continue to struggle with the issue, I am sure.

If you do, in the course of the summer, and certainly before our final report, come with more refined ideas of how you feel a constituent assembly can be fair, can be meaningful, can be a true reflection, because I am sure you are talking about this on a regular basis, I would really hope you would pass that along to us.

Mr Nikias: We will do that.

Mrs Y. O'Neill: We certainly like to continue to receive correspondence from those who have made presentations to us, because we think sometimes that we really only begin to think when we start to communicate with each other. You will no doubt continue to think and we would like to be kept up to date.

Ms McGregor: I am sure when it comes down to getting names that the equality-seeking groups that are interested in this particular issue will be quite capable of supplying names to whoever is preparing the assembly. We know who are our experts in the different areas. We would feel certainly much more confident in the whole process if our interests are being represented by a person whom we trusted, and we would have direct knowledge. This is something that indeed we would talk about over the summer, perhaps in a great more detail, but we certainly would like to have representation at any discussions on this issue.

Mrs Y. O'Neill: I hope somehow you will be at the conference. I do not think the problem is developing a list of people who are knowledgeable or experienced. The difficulty, as I see it, very simplistically, is those who do not get invited, all those people who want to be part of this, who have spent a long time on it.

Ms McGregor: Persons with disabilities have tended to be excluded from most things. We intend not to be excluded from this process.

Mrs Y. O'Neill: That certainly is the bottom line.

The Vice-Chair: One of the things you do not get a chance to do very often as Chair is to ask questions, but there is something I just wanted to mention. You talked about process, and I think what your group is saying to us is not different from what any other group is saying to any politician, probably across this country. The feeling is that the process in the past has not worked. I guess to a great extent it has not. I always come back and say, "One thing is that we must not forget sometimes that the process did work somewhat." I do not mean that to console anybody, but we have accomplished something in the 120-odd years that we have been here.

But I think that what people are saying now, if I understand what you are saying, is: "We need to have input because disabled people have not been listened to. Neither have native people. Various culture groups have not been listened to."

What I would want to ask as a question is, how are you able to build a consensus among all the varying people within this country, because really that is the crux of this issue: How do you build a consensus among what is happening inside Quebec, what is happening inside English Canada and within the various communities? What you people have done within PUSH, I think, to a certain extent, is to bring various parts of your community together. Is there a lesson we can learn from what PUSH has done that we can take on?

Mr Nikias: The traditional answer would be a lot of give and take, but perhaps you are looking for more than that.

The Vice-Chair: The problem is that a lot of people do not want to give.

Mr Baker: One advantage to a constituent assembly approach is that it cuts across the traditional, federal government versus the provinces and the regions fighting among themselves. Without going further than I am able to at this point in time, I would say that efforts are being made to discuss these issues with disabled people in Quebec. The Coalition of Provincial Organizations of the Handicapped has spoken. I know the National Action Committee on the Status of Women, for example, is making supreme efforts to maintain its communication with women in Quebec and involvement of representation from Quebec.

Carol McGregor spoke of the federal proposal that there be a comprehensive bill paralleling the Americans with Disabilities Act, a barrier-removal piece of legislation similar to that which was proposed I think first by the current Premier of Ontario during the last election campaign. That has a high degree of support within Quebec, so there is support within Quebec for that kind of a federal

initiative within the disabled community. Whether that would translate into leadership in the umbrella organization within Quebec to become involved in support for these kinds of constitutional proposals, thereby leading to a validation of the federal process itself, is something that is as sensitive for us as it is for any other serious organizations and structures within the country. It is something we would not want to prejudge or to say we have something we have not got.

The dialogue, the discussion, is ongoing within COPOH, within the Canadian Disability Rights Council. Angelo is chairing the human rights committee for COPOH and is one of the three designates, along with the representative from Quebec, on the Canadian Disability Rights Council committee struck to work on the Constitution. Those processes are ongoing and I think the constituent assembly holds out hope in that kind of a process, because it means that these kinds of national structures, which are non-governmental structures but which do exist and which are important, can contribute to the process of reconciliation which I think people must have coming out of that kind of a constituent assembly for it to be successful.

Mr Scher: I would like to add perhaps a couple of points to your original statement. Basically, the constitutional history of Canada is really what you were talking about in terms of how the process has been successful. I think it is a little bit early maybe to make that bold a statement. We are only 124 years as a country and the Constitution is as of 1982. The only real effort that was attempted to be put into legislative force was Meech Lake and that of course failed. There were prior conferences held to deal with the aboriginal peoples and their concerns, but the whole idea of constitutional reform in Canada is very new and it is something we are all looking at. It is somewhat of an academic question as well as a practical one. I think it is important to keep that historical framework in mind, in the sense that this is all very new. What we are after, at this point, as an equality-seeking group, is to ensure that the rights of minority groups such as ourselves are heard. I think that is what a constituent assembly and any process that would eventually result would entail.

1500

The Vice-Chair: What I was alluding to is that one of the things that strikes me sometimes, when you hear people speak on the issue, is that maybe sometimes we tend to mix constitutional issues with service issues and seem to forget we have come a long way within this country to address some of our social problems. That is not to say that we have not got a long way to go, but we need to recognize where we came from so that we can move on from there.

It is really not the job of the Chair to say those things and to get into the debate, but there is something I want to find out. Excuse me, you were going to say something.

Ms McGregor: I was going to say one thing actually. You are referring to how far we have come with social programs. We would like to ensure that we maintain a level of social programs. We have disabled people now who are not getting attendant care until 5 o'clock in the afternoon and not getting breakfast. There is an obvious

decline in our social programs. Transportation is being cut back for disabled people. If this is happening in Ontario, it is certainly going further elsewhere in the country. We cannot have our social programs eroded to the extent that they are right now.

The Vice-Chair: I really wonder sometimes whether people know why those programs are there. People sometimes get the impression they do a lot more than they actually do and wonder about cost.

Ms McGregor: The cost is certainly affecting our most disadvantaged group, the group that is unable to speak on behalf of itself the most. When you cannot get a person out of his or her home because you cannot get an attendant or transportation, then how is that person's voice being heard?

The Vice-Chair: Exactly.

Mr Nikias: We have thought very carefully about this and have tried to strike a balance between what you put in a Constitution, what principles you entrench in it and what you leave out. We are confident that what we are proposing is appropriate for the Constitution and we are aware of the fact that you cannot be very specific. On the other hand, there are certain fundamental principles we espouse in Canada, and I think we have spelled them out in this brief, which could be put in the Constitution appropriately.

The Vice-Chair: With that, I do not think there are any other other questions. Perhaps there is a closing comment on behalf of the group.

Mr Baker: Much of the discussion is focused on our proposal in relation to social programs but, if I might just draw your attention back to our proposal at page 4 of the brief, it does seem to us that other groups in similar situations to the disabled community do have their goals recognized within the Constitution. I am speaking of women, who did extremely well—we congratulate them in their efforts in the first go-round; and the multicultural community reflected in section 27. Aboriginal people are far from satisfied with the recognition they have received. That is certainly on the agenda, but they have also been recognized to a certain extent within the Constitution. That just has not happened for disabled people.

We do not see a cost in financial terms to recognition of what the consensus goal is among disabled people, that is, the goal of inclusion, which is not to preclude arguments that inclusion is not always as simple as pushing a deaf person into a classroom. If your colleague Mr Malkowski were here, I am sure we would have entered into that discussion with him.

The second point, following up on that, is the proposal of a barrier review every four years. Again, this is not to prejudge what, if anything, would come out of that barrier review, so there is no dollar sign attached to this. It is a process we are asking for to please think every four years about the ways in which government holds back or is responsible for barriers that confront disabled people. We know there are efforts being made, for example, to make courthouses accessible, and other things which are steps forward. That is great, but there has not been a comprehensive attempt made to document where the barriers exist.

The federal government is committed to this process at least once, culminating in April of next year. We hope the provincial government will commit itself to a similar process, but there is no reason why it has to be done once. We know everything cannot be achieved in one go-round, so we see this as a responsible, cost-effective, sensible way of confronting these issues and strongly urge your support for this kind of thing. If this is going to go on the agenda, we see it coming from Ontario and really hope all parties would be supportive of that kind of approach.

Mr Nikias: I would like to thank you for this opportunity. As we develop our position, I can assure you that

we will be corresponding with the committee to make sure you understand what our position is.

The Vice-Chair: We invite you to do so. With that ends our first week of hearings. The committee will be coming back together at 2 o'clock next Tuesday. I ask committee members to hold off for a couple of minutes before leaving. There are a couple of pieces of unfinished business that we need to deal with over the weekend. With that, the committee stands adjourned until Tuesday afternoon at 2 o'clock.

The committee adjourned at 1506.

CONTENTS

Thursday 1 August 1991

Errol P. Mendes	C-1217
Kathleen Ruff	C-1225
Committee of Persons with Disabilities on the Constitution	C-1235
Adjournment	C-1243

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

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Select committee on
Ontario in Confederation

Comité spécial sur le rôle de
l'Ontario au sein de
la Confédération



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Table of Contents

Table of Contents for proceedings reported in this issue appears at the back, together with a list of committee members and other members taking part.

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Table des matières

La table des matières des séances rapportées dans ce numéro se trouve à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et des autres députés ayant participé.

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

Tuesday 6 August 1991

The committee met at 1409 in room 151.

The Vice-Chair: The committee will come to order. We would like to welcome those who are tuning in to the parliamentary channel, watching these proceedings. We are now in the second week of the second phase of our hearings, in which we are asking people to come before our committee to give us specific information in regard to some of the questions that we posed to people after the first part of our hearings. I would like, if opportune at this point, for the members of the committee to introduce themselves to both those people sitting here and those people back at home watching. We can start with, let's say, Mr Malkowski, and work our way down.

Mr Malkowski: Hi. I am Gary Malkowski from York East.

Mr Drainville: Dennis Drainville from Victoria-Haliburton.

Mr White: Drummond White from Durham Centre.

Mrs Mathysen: Irene Mathysen, Middlesex.

Mr Winninger: David Winninger, London South.

The Vice-Chair: And from the opposition?

Mrs Y. O'Neill: Yvonne O'Neill, Ottawa-Rideau.

Mr Offer: Steven Offer, Mississauga North.

Mr Harnick: Charles Harnick, Willowdale.

The Vice-Chair: Also here at the table we have three members from our research department: Ted Wakefield, Paul Murray and Philip Kaye. Next is the clerk of the committee, Mr Harold Brown—I almost got you mixed up again, Harold—and Mrs Hansard, we call her—it is a little bit of an inside joke—Beth Grahame, who does the recordings of our proceedings.

ANNE F. BAYEFSKY

The Vice-Chair: Today we are going to be hearing from our first presenter, Ms Anne Bayefsky, who is a law professor at the University of Ottawa. She is here today to talk to us about the Charter of Rights and as well some questions around social and economic rights. Ms Bayefsky, if you can come forward, welcome to the committee, and any time you are ready.

Ms Bayefsky: Thank you, first of all, for inviting me to appear before this committee. In accordance with that invitation I would like to address three distinct questions that were set out in the material which you sent me or which the committee had prepared. The first is the override clause or the "notwithstanding" clause in the charter. The second will be the subject of social and economic rights in the charter. Third, I will turn to the constitutional amendment process itself.

When section 33, the override or the "notwithstanding" clause, was added to the Canadian Charter of Rights and

Freedoms in the November 1981 accord, federal and provincial governments insisted that the section would rarely, if ever, be used. A similar provision in the Canadian Bill of Rights had been used only once. It was obvious, the public was told, that its use would always be met by significant unfavourable political consequences.

The last nine years have proved otherwise. The section has been used in a pre-emptive fashion, that is, before a possibly unfavourable court decision, in Saskatchewan to avoid the application of the charter's freedom of association provision in the context of the right to strike. It has been used on a number of occasions in Quebec, both by the PQ government to avoid all sections of the charter to which the override could apply and by the subsequent Liberal government with respect to legislation concerning pension plans, agricultural grants, the Education Act and the sign language law. None of these uses met significant impediments within the respective provinces.

The reality of the viability of section 33 has resulted in a begrudging admission on the part of political actors that the Charter of Rights and Freedoms is not really the entrenched bill of rights the people asked for in their frequent testimony before the Hays-Joyal committee in the fall of 1980. During those hearings, the overwhelming number of submissions made clear that the proposed section 1 limitation clause should be strengthened in order to eliminate the doctrine of so-called parliamentary sovereignty. While section 1 was indeed strengthened by amendments accepted by the Liberal government, the November 1981 accord reintroduced the doctrine of parliamentary sovereignty or supremacy in a much more direct fashion without public consultation. It is important to note that the federal government extended the possible reach of section 33 to federal legislation and it is not, as usually entitled by the press, a provincial override power.

There is therefore a fundamental inconsistency in the constitutional Charter of Rights. Section 52 calls it "the supreme law of the land," but how supreme is a law which can be dominated by legislatures or Parliament when they choose to opt out? Judicial decisions have called it the "fundamental law of the land," but how fundamental is a document whose rights can be avoided by legislation passed by ordinary majorities of legislatures or Parliament? We have not managed, to use Professor Maxwell Cohen's phrase, to have two supremacies in Canada. We have a doctrine of supremacy of Parliament and not a supremacy of charter regime.

In my view, therefore, the contradiction of a constitutional bill of rights which could be overridden by ordinary legislative majorities should end in favour of the enhanced protection of individuals and minorities.

At the same time, however, I do think that this enhancement of judicial authority must be accompanied by a

reformed system of judicial selection. If, as the American constitutionalist Alexander Bickel said, judges labour under the obligation to gain general assent for their opinions or our free and democratic institutions are defined by the consent of the governed, there must be reform of the judicial selection process in Canada to permit greater popular participation and increased representativeness of successful candidates.

Profound scepticism, for example, will accompany any strengthening of constitutional protections for women if virtually the only people interpreting and applying those protections are men. Or, to give another example, the absence of a non-Christian on the Supreme Court of Canada gives rise to considerable concern that constitutional decisions especially affecting religious minorities, such as public funding for non-Christian schools or war criminal prosecutions are or will be handled inadequately.

This brings me to the second subject: social and economic rights. In general, international human rights law has tended to separate civil and political rights from social and economic rights. Their so-called interdependence is resisted, in particular by western states, because of a concern that an inability to satisfy the kinds of human needs required by social and economic rights in many parts of the world will serve as an excuse for the failure to protect civil and political rights. Furthermore, there is a widely shared view that the implementation of economic and social rights is much more closely tied to government economic policies and priorities and that judicial or quasi-judicial supervision of the enforcement of economic rights, in contrast to civil and political rights, is consequently inappropriate.

The international order is therefore characterized by distinct regimes for these two groups of rights, and overall, economic and social rights are associated with extremely weak supervision mechanisms. On the other hand, there are some rights of an economic nature which are found in civil and political rights treaties and considered in the same manner, such as the right to property, freedom of association including the right to trade unions, and the right to education. These three rights, with limitations, for example, are covered by the European Convention on Human Rights and are the subject of individual complaints which can be made before the European Court of Human Rights. Yet these rights are subject to some major limitations in the European convention itself. Moreover, they have been conservatively applied and interpreted by the European Commission and Court of Human Rights.

The right to property, for example, has been interpreted to require the individual to prove that he or she has been subject to a grossly unfair burden that outweighs the public interest or social aim of the legislation. The right to an education has been interpreted to mean the provision of basic skills and a primary education, but not an obligation, for example, with respect to higher education. A case that came up was on university correspondence courses to prisoners. A limitation of avoiding undue burden on public funds has been added in the course of interpretation. In other words, it might be said that where judicial or quasi-judicial institutions are required to apply economic or social

rights, particularly where there are regional or national differences in approach to the same issue, they are reluctant to interfere with political decisions and priorities.

Social and economic rights, however, are usually subject to a very different enforcement model. The European social charter, and the additional protocol to the charter which expands the list of rights but is not yet in force, is in force by a mechanism that begins with a decision on the adequacy of national legislation by a committee of independent experts. That committee bases its conclusions on governmental reports, not on individual complaints of violations of the charter, but the decisions of the committee are then subject to review by a governmental committee, which in practice has most often disagreed with the initial findings, and concluded instead that no breach of the social charter was evident. Even where the governmental committee finds otherwise, its report is sent to the committee of ministers of the Council of Europe, which has the responsibility of making recommendations to the governments concerned. The committee of ministers has never made a recommendation that there has been a breach of the charter.

1420

There is an effort under way to strengthen the implementation mechanism of the European social charter. A working group has recently recommended that a collective or group right of action be instituted. This recommendation would allow trade unions, employer organizations and non-governmental organizations to complain of violations of the charter. That recommendation, however, has yet to be adopted. It should be noted that the adequacy of any complaint mechanism would still depend on how and by whom such complaints were handled, whether, for instance, they might ultimately be heard by the European Court of Human Rights or whether they would still proceed to a governmental committee of ministers for a recommendation. Overall, while among the 23 member states of the Council of Europe there is recognition that the implementation of social and economic rights of the charter should be strengthened, the political will to put their enforcement on the same plane as civil and political rights is not present.

The International Covenant on Economic, Social and Cultural Rights is also enforced by means of state reports received and reviewed by a committee composed of independent experts. The committee on economic, social and cultural rights has no capacity to accept complaints concerning violations of the covenant. It monitors compliance by requiring state parties to present reports before the committee. It is dependent upon a state's willingness to draft reports in consultation with its citizens in a constructive process of self-evaluation and self-criticism, and on members of the public and the press to follow and report the committee's comments.

In practice, the process leaves a great deal to be desired. Canada, for example, drafts its reports on compliance with the covenant without any consultation with members of the public. The drafting is carried out by a group of federal and provincial civil servants who meet in private. The goal of the reporting process is to cast Canada in the best possible light in an international forum and to avoid international embarrassment. For instance, in 1989 the Canadian ambassador

presenting the report to the economic committee stated that several charter cases involving freedom of association have relied on the trade union rights in the covenant. On the contrary, the decision in the Supreme Court, which had been decided at that time on the issue of freedom of association, determined that the right to strike was not covered by the charter, in contrast to the express protection in the covenant.

When one well-informed committee member who knew of this contrary decision asked the Canadian delegation about the case, a member of the delegation responded that "a recent decision...[of] the Supreme Court relating to...trade union rights was clearly inspired by the covenant." The only case in the Supreme Court displaying any inspiration from the covenant did so in the context of a dissenting opinion. The Canadian example, therefore, indicates that the implementation mechanism associated with the covenant on economic, social and cultural rights is inadequate because of its reliance on the willingness of states to perceive the process of international scrutiny as constructive or beneficial rather than threatening.

With respect to the future, the economic, social and cultural rights committee will consider this fall a paper by one of its members recommending the addition of a system of individual petition or complaint on the economic covenant. However, this recommendation is unlikely to be adopted by the committee as a whole in the near future, nor at the present time by the United Nations General Assembly.

I will only mention the additional protocol to the American Convention on Human Rights in the area of economic, social and cultural rights. This protocol was concluded in November 1988 and is not yet in force. It contains an extremely limited implementation system. Since Canada is now party to the Organization of American States and is actively considering ratifying the American Convention on Human Rights, the question of ratification of its protocol will require Canadian attention in the not-too-distant future.

In short, therefore, international implementation mechanisms associated with economic, social and cultural rights are very weak. However, what remains to be considered is whether the fears associated with international supervision are applicable to the national scene or more specifically to the framework of a Canadian constitutional Charter of Rights. In my view, it is appropriate to differentiate the remedy provisions associated with most economic and social rights from those attached to civil and political rights. Whereas some economic and social rights do lend themselves more easily to the current Canadian charter regime, such as a right to an education and freedom of association encompassing a right to collective bargaining and a right to strike, most do not. After all, our Supreme Court has only recently stated that the comparatively straightforward issue of discrimination against those over 65 who want to work is beyond the realm of judicial competence, on the basis that the subject raised economic implications of hazardous proportions for judicial decision-makers.

The conclusion to be drawn is that any inclusion of most economic and social rights in a constitutional framework ought to be done in conjunction with the creative fashioning of a new enforcement regime. For example, one

might envisage a kind of economic and social rights ombudsman, who would have a duty to report to Parliament. In other words, there might be a right of petition which is not judicial in character. But at the same time, any extragovernmental enforcement of such individual, or perhaps group, rights should not be understood as a substitute for governmental responsibility to articulate and administer economic and social policy which protects these fundamental human needs.

The third subject I am going to address myself to is the process of constitutional amendment. I wish to point out that, although I am currently a member of the Canadian Bar Association's Task Force on Constitutional Amendment Processes, which is chaired by the bar association president, Wayne Chapman, the views I express here are only my own. For your information, the task force has not yet determined its final recommendations and hopes to report early in the fall.

The Constitution Act, 1982 is silent on the manner in which proposals for constitutional change should be generated or the way in which such demands should be co-ordinated or ordered. On the other hand, the pressure for subsequent amendment was inevitable in view of the many items that were left off the agenda of constitutional reform in 1982. Together with the demands of Quebec, emanating from its 1982 rejection of the patriation package, the lacuna in the methodology for constitutional reform in Canada has contributed to an instability in our constitutional framework.

No one doubts that our nation's continued existence depends on resolving that instability, but the current process appears destined to repeat the procedural mistakes of the past. It is difficult for an observer to determine just what is the process of reform currently in operation, but it appears to involve the development of a proposal almost unilaterally by the federal government; meetings of a federal committee bilaterally with provincial members of the Legislative Assembly or committees who in some cases, if not most, will not have the authority to speak on behalf of their governments; solicitation of the views of members of the public on the federal proposals; and last, finalization of a package by February 1992 which, it is hoped, will not require further amendment as the provinces and the public will already have been consulted.

If this is the new Canadian constitutional amendment process, it raises some serious issues. The substance of the federal proposal, not addressed by the generalities of Spicer nor the specific focus of Beaudoin-Edwards, has apparently been set by only one government. The public will have only a few months in the fall in which to organize and formulate opinion on what is fairly certain to be a very broad range of subjects. If provincial governments are to avoid the impression of collusion, the antithesis of the Meech Lake lesson, then it is hard to avoid the conclusion that, from a provincial perspective, February 1992 ought to be only one more, albeit significant, event on the path of reform. The question formally raised by this committee of the appropriate process of constitutional amendment in Canada should not therefore be considered an idle question or one for the next round of amendments.

1430

With respect to the substance of an amending process, I would submit the following. Canadian constitutional amendment history, both before 1982 and after, suggests:

1. Public participation is an expected element of the process and must be designed in such a way as to constitute a genuine exercise in consultation. This will require that public hearings be convened at a time which will maximize their potential influence on the content and wording of agreements. More specifically, this means, for example, that public hearings should at least be held on the agenda and principles of proposed constitutional changes or on a tentative legal text, and prior to political agreement on any final legal text.

2. Particular care must be taken not to bargain away individual rights, in which the interests of minorities, women and aboriginal people may be at odds with the interests of political representatives, in the course of formulating revised federal-provincial divisions of power.

3. Adequate preparation should be allowed for first ministers' conferences. This includes adequate time for the preparation of negotiations, including federal-provincial conferences of officials. The fuller the implications of choices are understood at the political negotiation stage, the better. The complexities and interrelationships of the demands on the Constitution require co-operation at the earliest possible moment, not isolationist exercises in either drafting or apparent decision-taking.

Finally, I would make two comments on the amending formula. I believe it is important to dispel two fallacies currently circulating with respect to the merits or demerits of the existing amending formula. The first fallacy is that the three-year period allowed for passage of most constitutional changes is too long. On the contrary, the post-1982 amendment history suggests the three-year ratification period provides important time for public mobilization and involvement in the context of significant dissatisfaction with political agreements. At the same time, the three-year period did not inhibit amendment where there was widespread public support, or indifference, as was the case in the 1983 aboriginal amendment and the 1987 Newfoundland amendment.

Second, the fallacy has been voiced that regional or provincial vetoes somehow increase flexibility from the current seven provinces having 50% of the population formula which governs most amendments. On the contrary, while it is recognized that such vetoes enhance protection for those subjects or interests falling within its scope, such protection is purchased precisely at the expense of a decrease in flexibility and the likelihood of future amendment.

The Vice-Chair: Any questions?

Mr Harnick: Yes, it is more a clarification. You were talking about the charter and the effect of the "notwithstanding" clause and the idea that the supremacy of Parliament is stronger than the supremacy of the charter. I lost you when you began to talk about the judicial selection process. I found that to be somewhat of a non sequitur in your thoughts. I do not know where you were going with that. Can you explain that for me?

Ms Bayefsky: If one is to institute a genuine supremacy of charter regime and really put an end to the doctrine of parliamentary sovereignty by taking section 33 out of the Constitution, then the judiciary will concomitantly have an increase in its power. I think one can only advocate an increase in judicial power if at the same time one chooses very carefully the personalities that are making those decisions. Although it would not be dealt with, of course, by the Constitution, I do not think one has to grant that increase in power at the same time that one thinks hard about changing the process of judicial selection. Does that help?

Mr Harnick: I understand where you are going. I do not know whether I agree with you because, in many respects, the loss of supremacy of Parliament takes us much more in an American direction in terms of process, which I suppose people will say has to be the case if you are going to protect your Charter of Rights. Do you see any other alternatives?

Ms Bayefsky: I do not see any middle ground between the supremacy of Parliament and the supremacy of the charter. I think that if anything attempted to accomplish that, it is perhaps the present charter, and it did not do a very good job. I mean, the job is impossible. What happened was that the very many interest groups that spoke before the Hays-Joyal committee in the fall of 1980 said they wanted to end the regime of parliamentary supremacy. They understood it would be an increase in the judicial authority but that authority was worth while in view of the protection it offered to minorities and those who were inadequately protected by the democratic process. Of course, the provinces were historically very much against a charter regime because for obvious reasons it took away from political power. So they insisted that the November 1980 accord be such that section 33 was introduced.

This is something the federal government had been resisting, so when it was reintroduced there were subsequent public hearings on the subject and it was quickly put through the federal House of Commons and the Senate, within a couple of weeks. Those months and months of testimony before the Hays-Joyal committee were bypassed through a closed-door session. I myself view that the introduction of section 33 was inconsistent with public opinion, so I do not see a middle ground. We took the trouble to strengthen the limitation clause, albeit it has had its drawbacks in application, and that was simply inconsistent with a reintroduction of something that means that legislatures do not even have to prove that the limitation is demonstrably justified. Whether it is or not they can simply opt out.

Mr Harnick: Is there any way, in your opinion, to develop a "notwithstanding" clause with a more prescribed usage so that the ability to use it is confined? What I refer to is, for instance, Quebec, where the idea of a distinct society may well be a predominant thought, the idea of protection of a unique legal system such as there is in the province of Quebec may necessitate some kind of a "notwithstanding" clause. I wonder if you can enlighten us about whether there is any way the usage of the clause can be limited by prescription of some sort without denigrating the individual charter rights.

Ms Bayefsky: You can build in supermajorities, the use of the "notwithstanding" clause requiring some greater than 50% as is true for ordinary legislation. You can make the sunset provision of five years shorter, requiring greater political overview or at least public input as to whether or not its use is acceptable or not acceptable. But I think the bottom line is that a charter is about protecting minority interests and the majority of the people are not the best judges always of what is in the minority interest. If one accepts the principle that democracy has to be tempered with protection for minorities and individuals, then to keep a "notwithstanding" clause kind of up your sleeve just seems to me fundamentally inconsistent with the principle of that sort of protection. I think there is a hard choice to be made, and we have been through this as a country for 20 or 30 years now, virtually since the Canadian Bill of Rights.

I think the arguments are fairly well set out on both sides and we now end up with the constitutional Charter of Rights, which is not truly entrenched since "entrenched" meant it could not be bypassed with ordinary legislative majorities. So we have a very strange constitutional Charter of Rights. We have not made the choice and later we have to come to grips with it.

Mrs Y. O'Neill: Thank you so much for coming from the University of Ottawa to present. I presume that was the background we were given about you and that is all I know, and I am very happy to know that you are making a contribution at the national level as well as with the bar. I feel you have made a very significant contribution to our work. You have tackled three of the very difficult questions that we placed.

I wanted to just get a clarification about the documentation you used regarding the social rights because we have before us today a charter on fundamental social rights drafted and finalized by the social affairs council, reported by the presidency to the Strasbourg summit, and this is dated November 1989. You mentioned the social and economic rights international covenant. Are those complementary documents?

1440

Ms Bayefsky: No, they are different; they emanate from a different source entirely.

Mrs Y. O'Neill: You used the latter, right? You were speaking to it more.

Ms Bayefsky: Yes, and I also talked about the European social charter. Then there is a European Community charter from November 1989, which I assume you are speaking of, having to do with European Community law and the countries that are party to the European Community. In terms of the international documents that deal with economic, social and cultural rights, I simply address the European social charter, which has been around for a long time and which is addressed to the member states of the Council of Europe, although not all of them ratified it.

Second, the International Covenant on Economic, Social and Cultural Rights—I think there are 18 members of the European social charter; I can look that up—but the International Covenant on Economic, Social and Cultural Rights has around 100 ratifications. That is a document

that emanated not from the Council of Europe but from the United Nations. It also has many more parties. The third document I referred to was the protocol to the American Convention on Human Rights dealing with economic, social and cultural rights, which emanates from the Organization of American States. That is not in force yet, but potentially it would affect Canada more than the European situation, since we may or may not decide to become parties to it.

Mrs Y. O'Neill: And in all of those instances, and you certainly have done your homework, undue hardship has to be proven to really get anything to arise from those pages and from those covenants and agreements that is meaningful to an individual. Is that what you are saying?

Ms Bayefsky: Let me clarify. I also mentioned—I should have repeated it—that there is a fourth instrument in the European Convention on Human Rights that deals primarily with civil and political rights: freedom from torture, freedom of expression and so on. It has within it two or three rights that could be classified as economic rights and are subject to judicial interpretation. That judicial interpretation, or quasi-judicial in the case of the European Commission of Human Rights, has introduced a concept of undue burden on public funds. So with respect to the meaning of the other economic, social and cultural rights, for instance in the International Covenant on Economic, Social and Cultural Rights, one that emanates from the United Nations, you never have individual complaints that are interpreted by a judicial or quasi-judicial body. So we have very little idea of how those would be applied in the framework of a right of individual petition.

Mrs Y. O'Neill: So it seems from what you have said, and as much as I can understand all the circumstances that you related to us, these documents have not yet really come to life, or individuals have not benefited directly, with all the good intent and all that is there. That is the issue I am trying to understand. I suppose it is very similar to our charter and what you were just explaining with Mr Harnick, that it just does not seem to happen the way the individuals, the persons whose hopefulness is raised by the coming together of such a document—that hopefulness somehow does not happen, does not come to fruition.

Ms Bayefsky: Let me answer your question by saying the international human rights community believes, I think, that the mere setting of standards set out in agreements to which states turn their attention and ratify and are urged to ratify every year—the General Assembly—is not an insignificant event for individuals, that this is something, at least in free societies, to which individuals can turn and use as tools to encourage their governments to change social or economic policy. So as a standard it has some impact.

Now, of course, the other side of that is that in the absence of a right to complain as individuals or as members of groups to some body about violations of the terms of those agreements, they are very much weaker in their effect than those civil and political rights documents that allow for individuals to complain, because the individual has a direct interest in seeing them enforced. The international community in general has been very reluctant to grant individuals that ability to complain about violations of economic

and social rights. So yes, the enforcement mechanism associated with economic rights is very much poorer than civil and political rights. It does not mean it is totally ineffectual. It does have its impact as a statement of intent and something to look up to, but if we just turn to Canada and we ask what difference has the economic, social and cultural rights covenant has made to Canadian law, you have to look very hard to find the difference. But it is a tool. If people were more aware of it, it would provide a source for public interest groups to lobby.

Mrs Y. O'Neill: Mr Chairman, I reluctantly pass.

The Vice-Chair: That is quite all right. Mr Malkowski.

Mr Malkowski: Thank you for such an excellent presentation. It helps me to realize the three areas we would be asking for clarification on, because the Canadian charter seems to be weak, especially when you talk about the international conventions. If we look at individual rights, are you saying then that group rights should be more focused on? It was not very clear to me, individual rights and group rights and how those cash themselves out internationally.

Ms Bayefsky: I recently read an article on economic rights by someone who is very much an authority on this subject, and he was very reluctant to classify economic and social rights as group rights. The reason for his reluctance was that group rights and international laws seem to be something that states were going to shy away from, and the concept of systemic complaints requiring systemic remedies was something that would not get very far with the international community. So he said, in his words, "After all, it's the individual that starves to death."

I am not sure how fruitful it is to enter the debate as to whether economic, social and cultural rights are group rights or individual rights. I think the real question that has to be asked is, what kind of remedies do those rights or human needs require? I think in general the economic, social and cultural rights address themselves to systemic issues and therefore call for systemic remedies.

My concern about the place of the judiciary in enforcing those remedies arises from that analysis. I worry about the judges in Canada being capable of identifying the appropriate systemic remedies, taking the broad-based social evidence that would be required to understand and develop the appropriate remedy and just simply coming to terms with solutions in the area of economic, social and cultural rights.

But when I grappled with this and the committee asked me about this specifically, I did not thereby come to the conclusion that there ought to be no right of individual petition associated with economic, social and cultural rights. It seems to me that the task is to be creative about fashioning a remedy associated with economic, social and cultural rights that may indeed arise from a right of individual petition or individual complaint mechanism. The only question is, who is going to listen to the complaint and how is it going to be dealt with? It does not mean that we simply stand back then and say they are simply on two different planes, and one is merely a declaratory statement of aspirations and the other can be enforced. I would not go that far.

1450

Mr Winninger: Professor Bayefsky, you call for the reform of the judicial selection procedure and I wondered if you look with favour on the kind of public confirmation hearings they have for Supreme Court justices in the United States.

Ms Bayefsky: I think in general my answer is yes. Although we have all kinds of phobias about being American or seeming as if we are even inching towards US models, I think in general the idea that the individuals in our highest courts should be selected from people who have subjected themselves to certain question-and-answer sessions, and that their individual records have been carefully examined by the public, is legitimate, especially in the context of an enhanced judicial authority.

Mr Winninger: I see. Thank you.

Mr Offer: You have spoken with some concern over section 33, the override clause. As I heard your presentation, you proposed the removal of section 33. I do not wish to put words in your mouth, but that is what I heard, the removal of section 33, but only with a reform of the parliamentary process basically.

Ms Bayefsky: Judicial selection.

Mr Offer: Judicial. In other words, if section 33 is to be removed, then there must be reform of the judicial process. I guess my question is, what comes first?

Ms Bayefsky: For the moment, we are in the midst of constitutional negotiation. So I think what comes first is the removal of section 33, in terms of the timetable which appears to be before me at the present time. But I think there has to be some sort of concomitant political commitment, albeit not constitutional, to reform the selection of the judiciary, which of course is not an impossible task and probably far more easily accomplished than the amendment to the Constitution.

Mr Offer: One of the points in section 33 is the revisitation, the sunset after five years. I wonder if you would share with us your thoughts as to whether the fact that there has to be a revisiting of the issue within five years and thereafter, as it is, whether that in any way diminishes concern with section 33.

Ms Bayefsky: It diminishes concern in some respects. It forces it on to the public mind again; but if debate is non-existent, as was the case with the PQ's original use of it, then the debate will be non-existent five years later. I do not think it is much consolation to those individuals who either had to put up with a diminution of their rights for the first five years, or is something they can particularly look forward to when the five years are up.

Mr Drainville: Thank you very much for your presentation. I would like to take us back to the social charter; I have a question about that. Acknowledging first of all the great difference between civil and political rights and social and economic rights, and acknowledging also the very great difficulty that one can imagine in trying to ascertain how one might effectively ensure that such economic and social rights are enforced, we come to a problem in this country, and at this particular time right across the country,

whether we read the Spicer committee report or the deputations that people have made to this committee, or deputations made to other groups in Canada.

What we have seen is a very strong sense in which many people in Canada feel we have a social contract in this country which is extremely important to how we live and to our future together as a nation. In that respect, what we are challenged with as politicians and in terms of the future of this country is, how do we somehow link that hope and that vision of a social charter, which many people have in this country, with the *realpolitik* of what we have to do to make this country work, with systems and structures and a Constitution that is going to represent the aspirations of those people and also a document that is going to work for the betterment of those people as well?

Of course, we get into some really great difficulties with all of this. We can acknowledge—and I would ask if you could acknowledge this—that there is obviously a sense that Canada has a social charter which our history has indicated, that we as a nation want to believe that we must provide education, social services and health services and the rest of those things that are so important. Now, if that is true, do you have any advice that you can give us as a committee on how we can make such a social charter something that will work in Canada?

Ms Bayefsky: First of all, it seems to me—although we are very keen on Constitution-making in this country, and I as a constitutional law professor am only too happy to see it come alive—that not all aspirations have to be in the Constitution. We have to be selective about what is appropriate to constitutionalize and what is not. In other words, we have to cut short our tendency to overburden our Constitution and what is expected from it.

Simply because we have a social contract and certain common or shared understandings as to what government ought to be providing for its citizens, or what standard of living or health care ought to be in existence across the country, and so on—to say that they should not be put in the Constitution is not to say they should not exist or are not part of our fundamental compact.

Let me make another point, that governmental responsibility has to come first in ensuring that those economic and social needs are met; that to expect a charter of rights or social rights can do it somehow in place of governmental economic and social policy is wrong-headed and does not make it work.

Whatever this grand constitutional lawmaking scheme may be that is out there at the moment, trading a federal responsibility for social welfare or certain divisions of power between federal and provincial governments, and shifting them around hoping that a social charter of rights is going to take the overflow or is going to be a safety net—in my view that is not going to be effective. Ultimately it comes down to having the right kinds of governments in place that are going to provide for that social safety net.

1500

Lastly, it is not so much a matter of agreeing, regardless of what political party people are associated with, that there are certain basic minimums which are part of our

Canadian traditions or sentiments or values. Even if we can agree about them in terms of a charter of rights—and I think we can; I am not so pessimistic in a great many respects—the question is one of competence for fashioning remedies. In so far as a charter of rights means a document that requires individuals to have enough money to go before courts, and then to have courts provide us with solutions for an individual case and not fashion remedies for the group or even a social group, that whole system seems very ill-equipped to provide the remedies necessary for social and economic rights.

I do not think the way to make it effective is to hand over to the judiciary the task of deciding what social services are minimally necessary or to what extent, or what the standard minimum wage ought to be, or those kinds of things. I think one has to be very selective at deciding what the judiciary can handle and, where the judiciary cannot handle it, what other kinds of remedies we can come up with, like reports to Parliament perhaps, or complaints to ombudsman-type individuals.

The Vice-Chair: Mr White, one last short question, before recessing.

Mr White: You mentioned some concerns with regard to the amendment process and specifically what had been problematical in the past, what had not been successful, and what you envision would be occurring in the next short while. Do you have any concrete suggestions as to how to get around those criticisms, the exclusivity of the process that you elaborated upon, for example?

Ms Bayefsky: I think one concrete thing I would say comes from reading the Globe and Mail's recent report on where this committee goes from here; that is my only source of information. The committee's public hearings will end before the substantive federal proposal is on the table. I understand there will be some kind of constituent assembly in October—a two-day process or whatever it is—but short of that, there are no public hearings anticipated as far as I understand it.

With all due respect, that is unsatisfactory. It seems to me that if the Meech Lake process is to be avoided, public hearings have to be held on the substance of concrete proposals and not be held in a vacuum. In some respects, the idea of holding public hearings on the agenda for reform is entirely appropriate, but it seems to me a second stage of public hearings is required in order to make that input effective and to give a feeling of general satisfaction.

If the federal government is the only entity which has those public hearings, knowing full well that it has an intention of wrapping things up in a very short period of time, I do not think that is going to be satisfactory to the majority of the public in Ontario, if I may be so bold.

The Vice-Chair: Ms Bayefsky, do you have any closing comments at this point?

Ms Bayefsky: No, I do not. Good luck.

The Vice-Chair: Thank you very much. The committee will be in recess until 4 o'clock this afternoon.

The committee recessed at 1505.

ROBERT E. ROBERTSON

The Vice-Chair: The committee will come back to order. We are now going to be hearing from Mr Robert Robertson, who is from the International Development Research Centre in Ottawa and is going to speak to us on social and economic rights. It is my understanding that Mr Robertson has about a 15-minute presentation. If Mr Robertson is ready, he can start and we will go to questions afterwards.

Mr Robertson: I want to thank the committee for its invitation to be here today. Although I have been invited to address all the questions under the heading of the Charter of Rights, my own area of study has been on the issue of social and economic rights. Therefore, I think I might be most helpful to the committee if I were to spend my time on those questions which deal specifically with that issue. They are the 7th through 11th questions in your list. I should also say that as the right to food has been my principal area of interest and the one I have written on, I will refer to the concepts underlying that right to illustrate my presentation.

The first question asks whether economic and social rights should have constitutional standing. My answer is yes, because they are of equal value to civil and political rights which do have constitutional standing. They are equal within the international human rights system, and Canada is a party to international agreements which treat these two sets of rights as being equal. Neither set of rights on its own guarantees the full development of one's personality and character. A person who is well fed and well housed but lacks civil and political rights is only half a person. Someone whose physical and intellectual capacity is diminished by the absence of the basic necessities of life cannot play a full role in the civil and political life of the society. I do not think there will be much argument that the two sets of rights deal with issues of equal importance.

I think where the argument arises with economic and social rights is whether it is feasible and desirable to treat them as legal rights as opposed to policy goals. I think there are at least four good reasons why it is desirable.

First, the rights have never been fully implemented or achieved in the absence of laws which establish them as constitutional rights available to individual citizens. This argument is simple. We have 124 years of history as a nation. At no time have all our citizens enjoyed economic and social security. At times, many of them have been desperately deprived of it. At the present time, in the area of the availability of food, for example, things seem to be getting worse. If one believes that individuals who through no fault of their own lack the basic necessities of life should have the right to such necessities, they must have the legal means to assert such a right. Social policies alone have offered no continuing guarantees of this kind.

The second reason to treat economic and social rights as constitutional rights is that it establishes them as priorities for the society and as a valid expression of our deepest values. Human rights are about priority setting. They express the values of the society, which act as the touchstone for its governance. I believe societies should establish for themselves fundamental principles, the observance of

which the society believes will lead to the best possible country, principles which are not subject to political expediency or bureaucratic alteration. That being said, what could be of more value to us than the idea that a child should be well fed or that a disabled person should be well housed? If we believe that such ideas stand at the heart of our collective value system, then they should be treated as such by embodying them in the country's most important statement of principles, the Constitution.

The third reason such rights should be in the Constitution is that international law would seem to require more from us than we are now doing. In the food area, for example, there are over 100 documents relevant to the right to food, and Canada has signed many of them. The most important document is the International Covenant on Economic, Social and Cultural Rights, which says in article 11 that everyone has the right to an adequate standard of living, including adequate food, shelter and clothing.

The covenant also makes clear that states are obliged to bring to bear their maximum available resources to ensure the establishment of such rights. The wording of this covenant, which Canada has never transformed into domestic law, points up three serious deficiencies in our country.

First, it is everyone who has economic and social rights. The fact that the people of this country may be generally well fed, clothed and housed is not the most important thing. The important thing is whether everyone is. We are speaking of individual human rights, and at the present time individuals do not have a constitutional mechanism to claim such rights.

Second, it is government that is responsible for achieving the rights. Individuals have a right to make their claim against government. In international law, private charity is not an acceptable substitute for the devoting of public resources to feeding, clothing or housing people.

Third, the state must devote its maximum available resources. There is no expectation that desperately poor Third World countries can immediately establish economic and social rights.

There is an expectation that issues such as food, shelter, clothing, health and education will have a priority claim on public resources, as against those uses of public funds which do not represent the fulfilling of a human right. To fully live up to our international commitments, I believe we must establish these rights as fundamental law.

The fourth reason such rights should be in the Constitution is that establishing them as constitutional rights in Canada could have a positive effect in promoting human development in other countries and on the international human rights system. Activists and lawyers working in the human rights field know the immense value of the internationalization of civil and political rights. The international law is cited in domestic courts, is used as a standard in denouncing such evils as torture and political imprisonment in rights-abusing countries, and developing countries look to the experience of other countries with long histories in the civil and political rights field in forming their laws to protect such rights.

But economic and social rights, as important as they are, have never taken off as legal concepts designed to

govern the actions of states domestically and internationally. For a respected country like Canada to recognize them in its Constitution would provide a jolt of energy to such rights achieving their proper international recognition. Rights are dynamic. Their acceptance in one country speeds their acceptance and the benefits they bring in other countries.

The International Covenant on Economic, Social and Cultural Rights says that countries should move towards establishing economic, social and cultural rights internationally as well as domestically, so I believe that for Canada to give them constitutional recognition is one indirect way to promote them internationally.

The next question you have asked is what rights should be incorporated into the charter. I obviously believe that rights relating to an adequate standard of living should be there, and I think that every day, as the lineups at food banks grow longer, the Canadian people are increasingly prepared to acknowledge that we cannot go on this way. There would be a great deal of sympathy for the proposition that there should be established the right to an adequate standard of living. Beyond that, I think anything which is essential to the full physical and intellectual development of a person is a matter for constitutional recognition.

My hope would be that Ontario, in setting out the rights it thinks should be in the charter, would give priority to those rights to which Canada has committed itself internationally, and indeed that the wording in the charter would reflect the international wording as closely as possible so that Canadian judges could have access to some of the splendid international scholarship to assist them in elaborating the principles in Canadian law.

The next question is what limitations should apply to these rights. I have already hinted at my answer with respect to the rights required to ensure an adequate standard of living. Our international obligation is to apply the maximum available resources. Therefore, the only limitation I would place on the rights is that a court may find that the resources do not exist. Despite our current fiscal problems, if absolute priority is assigned to fulfilling basic economic and social rights, I find it hard to believe that we would not have the resources to do the job.

The next question is how such rights should be enforced. I cannot deny the immense intellectual challenges facing those charged with the responsibility of determining how such rights would be enforced. I must say that time simply would not permit me to fully explore this question, and also I make no claim to have thought through all the implications myself. I certainly believe that these rights must have enforcement mechanisms as strong and as accessible as those now available to people whose civil and political rights have been abused. For the enlightenment of the committee, I might simply go over what are perceived as the duties of the state in implementing the right to food to illustrate the kinds of enforcement mechanisms which might be required. I take this list of duties from the private scholarship in the area and from United Nations reports.

States have three duties: to respect the right to food, to protect the right to food and to fulfil the right to food.

The first obligation, to respect the right to food, means that states should not interfere in cases where individuals

or groups can take care of their own needs. For example, this would be an argument against the expropriation of food-yielding land for non-food purposes if people were truly dependent on that land for their nourishment. Another example where the right could be asserted would be the case of the Innu of Labrador, who are fighting low-altitude NATO flights over their territory because they claim they adversely affect the game upon which they are dependent. I think that respecting the right to food fits in very nicely with the present charter purpose of stopping government action which is unconstitutional.

The second obligation, protecting the right to food, means that states must counteract or prevent activities by others which negatively affect food security. For example, the pollution by industry of streams upon which aboriginal peoples depend for fish would be a case where the courts would have to mandate government to take preventive action.

The third obligation, to fulfil the right to food, requires the state to provide the food or the means to get it. To enforce this obligation, the courts might very well be required to examine levels of social assistance and make judgements as to their adequacy. This is how I see the right to food being enforced. Obviously it means greater judicial powers.

The final question relates to the experience of other states. There are numerous communist states and developing countries which have constitutional provisions on economic and social rights. Perhaps of greater relevance to this exercise, however, is the law of other western countries. The right to health is established in the constitutions of Italy, Spain and Greece. The right to shelter is in the Greek and Spanish constitutions. The right to social security is in the Dutch and Spanish constitutions. Regrettably, the library resources at my disposal in Ottawa did not contain any material on how these provisions have worked in practice.

One other example where there is some literature is the Irish Constitution, which has a provision called "Directive Principles of Social Policy," which are stated as being for the general guidance of Parliament and not cognizable by a court. However, the courts have said they will have regard to these principles as a guide to interpreting the content of other constitutional provisions.

Finally, of course, we should not forget the fact that our present charter itself may have economic and social rights in it. The Supreme Court of Canada has explicitly left open the possibility that the "security of the person" provisions in section 7 may encompass rights related to the basic necessities of life. The Supreme Court of British Columbia has only recently held that persons receiving social assistance constitute a group which may be protected under the section 15 "equality rights" provision of the charter. Nevertheless, because the charter is now an instrument designed essentially to prevent governmental action, it is highly unlikely that in its present form it could ever lead to the fulfilling of economic and social rights.

1620

Obviously time restraints have required me to deal with many of these complicated issues in a cursory way. I would be most happy to answer any questions I can. I will also leave with you this more detailed study which I wrote on

the right to food in Canada, to which some members of the committee and its staff may wish to make further reference.

Mr Malkowski: Thank you for your presentation related to the right to food. There are three you talked about: welfare, protection of farm land and the right to the satisfaction of those needs. Do you think the Canadian Constitution can protect all of those three areas? If not, what other countries could we look to to follow that model?

Mr Robertson: I do not see why not. I have not, in all of the research I have done, come across in-depth discussions of what other countries have done in this area. They may exist, I do not know, but unfortunately I cannot bring to bear any intelligence on that issue.

I do not see why in the food area it could not have constitutional standing and why a court could not adequately adjudicate on it. The three areas I have outlined where the right to food applies—respect, protect and fulfil—seem to me to be areas where the courts could very easily make judgements, provided they had proper empirical data to base their conclusions upon and had access to the scholarship which would allow them to determine what the right to food, for example, means.

I know courts protest that they do not want to get into social and economic policy-making, but I think they probably protest too much on that issue. When the courts say you cannot have a ban on tobacco advertising, they are engaging in social policy-making. When they say people are not getting speedy trials, they are instructing government, in effect, to spend more money to ensure that a right is available to people. So I think the judiciary, if proper arguments are put to them, are quite capable of passing judgement on economic and social rights.

Mr Harnick: The previous witness, Anne Bayefsky, professor of law at the University of Ottawa, told us a couple of things I would like you to comment upon. She said, first, that it would be wrong to assume that a constitution can contain all the rights everybody could possibly think of. She said that particularly in the context of economic and social rights. She also said there comes a point where you cannot fetter the right of governments to set policy.

Where do you draw the line? That is essentially the opinion I would like to elicit from you. As well, she indicated that courts may not be the most appropriate body to adjudicate when dealing with economic and social rights. I would not mind your commenting on that as well.

Mr Robertson: There certainly has been in the last 10 or 15 years an explosion of rights. Just the list of human rights which people have advocated is a very long one. I am sure she is right, that you cannot look at all the rights which people are advocating and put them in your Constitution. Social and economic rights are what are called the second generation of rights. There is now a third generation of rights, such as the right to impart and receive information. There is the right to participate. There is the international right to development. There is a long list of these things, and I certainly agree with Professor Bayefsky that we cannot put them all in there.

I think I would go back to the point I made in my paper, which is that we look at what we think our fundamental

values are, and once we have decided what they are, we look at those expressions of human rights which exist in the international sphere and which can appropriately be justiciable by a court. I have made the point that I think certain basic economic rights relating to standards of living are appropriate for inclusion in a Constitution.

Judges, I suppose, do a lot of things they do not feel themselves completely prepared to do, but in the right to food, for example, I think the senior levels of our judiciary are quite capable of understanding those principles and applying them in as fair and appropriate a way as they are with respect to civil and political rights.

Mr White: Mr Harnick asked a couple of the very questions I was going to. I wonder if I can go a little bit further than that, though. I am curious what your thought is on why there seems to be the distinction with civil and political rights and those who advocate we should go as far as we can in that arena, but suggest in terms of social and economic rights that they should not be included, should not be articulated in the Constitution. I wonder if you have any theory to suggest as to judges being reluctant to comment on those social and economic issues.

Mr Robertson: Your question is, why do people doubt that we should have these rights in our Constitution? I think it is a historical question. Obviously in western society civil and political rights have been the things we have emphasized. They are part of our constitutional history. Major western countries like the United States have never signed on to economic, social and cultural rights as rights. They have not signed the international covenant with respect to those rights, for example, so I think it is simply not as much a part of the western tradition as civil and political rights are.

The other reason is that civil and political rights have, generally speaking, been thought of as rights which the individual uses to stop governmental action, whereas economic and social rights are rights an individual uses, or would use, to compel governmental action. That is generally true, but there are exceptions to that. We have the civil right to a fair trial. Obviously government is required to spend a lot of money to ensure that we have that.

On the other hand, as I pointed out in my paper on some aspects of the right to food, I expect if other economic and social rights are the same kinds of rights that civil and political rights generally are, it is stopping governmental action, as opposed to compelling government to commit resources to fulfil the right.

At the same time, you can see that many governments would not wish a circumstance where they are compelled to spend public funds on the basis of somebody on the judiciary saying that they were not spending enough money on social assistance, for example. Every economic and social right probably gets in the way of some politicians' political desires for a particular policy, and so there is going to be resistance on that part. Also, economic and social rights have in the past been associated as communistic or socialistic and they have gotten a bum rap because of that, I think. So there are a lot of historical and political and economic reasons why there has been a resistance to it.

Another reason is that when we speak about the judiciary, unfortunately many lawyers and many judges simply have not studied and are not aware of economic and social rights and the international jurisprudence on them and so on, so I think they would feel initially quite uncomfortable in dealing with some of the concepts, but over time, as intelligent people, if they have the right arguments put to them, they will begin to understand them.

1630

Mr Offer: Mr Robertson, you spoke in your presentation in terms of it being feasible and desirable to treat social and economic rights as legal rights, and you went on and gave four reasons for that. In your reasons you said it was desirable and you went on to express the four. I notice the word "feasible" was left out, and I wonder if that was purposely done or not, and I was wondering in terms of your presentation if there is a message we should take in terms of the feasibility of the proposition you espouse.

Mr Robertson: I think you are right to point out that probably in my arguments I left that hole, but perhaps I have tried to address it in some of the answers I have given. I think it is quite feasible with respect to the right to food. If we look at the three kinds of state obligations that we see with respect to the right to food and the examples I gave, I think it is quite feasible for a court to pass judgement on those things and I think it is quite feasible for a government to respond to the court judgements which are made.

Mr Offer: If I might have one short follow-up question to that, without commenting directly on a particular right, you have in your presentation lumped social and economic rights together. There may be those who say that that in many situations those will be viewed not as being together but rather as being apart, and in fact there are those who say that in terms of economic rights there is the right of the general public in terms of an undue burden on public funds. I wonder if you can share with the committee your thoughts as to the possible economic right of undue burden on public funds vis-à-vis the social rights.

Mr Robertson: I have not seen a right characterized in that way in the reading I have done in the field. A lot of people talk of a right to this or a right to that, but I think when we really get down to it, we have to see some kind of official and formal recognition of something as being a right, and the right you have characterized as the right of the public not to have an undue burden is not a right I have seen anywhere.

In 1976, when the federal government and all the provinces decided it was appropriate for Canada to sign the international covenant on economic and social rights, I think they implicitly made that judgement. They made the judgement that these were rights they wanted to fulfil and they signed on to the wording of that covenant. As I said, they are individual rights which I think the Canadian state has recognized and said should be individual rights and has committed itself to fulfilling.

I do not think there is any such thing as the right of the people not to have an undue burden placed upon them. That is a political question, but it is certainly not a right

which has been discussed that I am aware of in any of the literature on the subject.

Mr Offer: If there was a right to, for instance, shelter—I would like to carry this on—and I think that is one of the examples you used, that would potentially give everyone the right, through legal recourse, to say they are entitled to not only shelter but a particular form of shelter. Would you in that instance be prepared to say that all individuals may argue that they are entitled to that shelter, within a certain reasonableness, no matter what the cost is to the public purse and no matter what other form of housing government may use as an alternative, if the individual feels his rights are still not fully expressed in the government program?

Mr Robertson: I would expect that a court would have to make a judgement with respect to adequacy of housing; in other words, is the housing of sufficient quality that it would be thought to be generally acceptable by the populace, or some kind of standard like that?

The court would then also have to make a judgement, I suppose, upon the system which had been set up by government to determine the eligibility of individuals to housing. As part of that consideration, one will look at the resources available to individuals or the resources which could be made available to individuals through their own labours. But if you have a disabled person who is unemployable, then I would certainly argue that the resources of the society should be made available to make sure that person is adequately housed. At some stage, somebody would have to make a determination on the wording of the covenant, which says that the maximum available resources of the society are being used to fulfil that right.

I think it is a question of priorities. It is not easy to make that judgement. On the other hand, that judgement has to be made at some stage if you are going to treat these things as rights.

The Vice-Chair: We are running out of time, Mr Offer. Very quickly.

Mr Offer: No one would disagree in terms of the need for housing and certainly making housing available to a whole variety of individuals, but the question I ask you, and I think you have been addressing it, is this: that a question that should be found within the Constitution in terms of priority or should that be a question which any particular government, whether one agrees or disagrees, should set in terms of its ability to prioritize those things which are important to that government and which it takes to the people of whatever area it seems to be governing.

Mr Robertson: I think another way of stating your question is, should they be individual rights or should they not be individual rights? If you say they are individual rights, then you have to treat them as rights in the way you would treat civil and political rights and you have to give people the legal mechanisms which allow them to claim those rights.

You have really posed the first question again. Should they be in the charter or should they not be? I have said they should be there, because I think they are of fundamental importance to the country and I also think that we have committed ourselves internationally to that. We have said they are rights and we have to treat them as rights.

1640

Mr Drainville: I am very glad you are here in front of us, particularly for taking the line you have today, speaking about hunger in Canada and the relevance of that issue.

In 1985, I wrote a book called *Poverty in Canada*. Some of the points you have raised today about the necessity of adding elements to the social charter in Canada and entrenching those things for all Canadians were issues I raised in that book. You have raised two distinctions which I find very helpful. One is, what are the fundamental values of the nation?

There is no question that in all the discussions going on today across Canada in various forums, what we have from Canadians is that there is a sense in which, at a fundamental level, we believe there is a social contract that has been established by governments and by the people of Canada in the past. Their support of that social contract is such that many of these people want to see this somehow entrenched in the Constitution. They have raised this issue with the various groups.

You have indicated, and I think very appropriately, that judges already make decisions that have political and economic ramifications. It is not so simple to make the distinction between civil and political elements and social and economic elements. You mentioned the Askov decision and how in making that particular decision there was a financial or economic fallout from that. I think that point is well made. The point that always has concerned me is that the rights we so obviously adhere to in the Charter of Rights and Freedoms, and which are great rights, are by and large middle-class rights.

Let me unpack that when I say that. In Canada, freedom of religion, freedom of the press and freedom of expression and things like that are very much rights that are owned and accessed by individuals who economically benefit in our society. Those who are poor and those who are not privileged and those who have many more problems to deal with in their own lives do not have access to even those that are entrenched in the Constitution. That is what we see.

We see that across the country. You mentioned, for instance, people who are hungry. The problem of hunger is a major problem in this country. If you talk to any individuals, you would see that those individuals would readily acknowledge that of course it is wrong for individuals to starve or be malnourished or have problems finding food. Yet we still do not have a mechanism or a means by which we can ensure that people are cared for.

It brings me to the last point, and that is that from the last deputation we had earlier on today and yourself the question arises as to how you can introduce the kinds of changes to the Charter of Rights and Freedoms that you are talking about without putting the government or the politicians, or whatever, into a straitjacket and, in a sense, forcing them to deal with an issue which they economically might not be able to deal with in the future. This is the case, that if the majority of people in Canada vote for a particular party then surely that political party should be providing what the people of Canada expect.

In terms of any response you have, I wonder if you could respond to the concern people have about putting that kind of difficulty or roadblock in front of our political wing.

Mr Robertson: Obviously things called economic and social rights are not particularly well understood by the person on the street. They maintain a very low profile internationally. There would have to be a good deal of public education, led by politicians and by interested groups, on these issues for them to become more widely supported in a formal way by Canadians than they are now.

It is certainly easier to get agreement on economic and social rights or programs when everybody is affected by them. Obviously everybody needs health care and that is widely supported simply because everybody ends up going to the hospital at one time or another or goes to doctors, so you find wide public support for it. Not everybody goes to food banks, so it is more difficult to get public support for that, and yet food is just as important and is a major component of health.

Civil and political rights are middle class to the extent that the middle class has more opportunity to use them effectively. Obviously poverty groups can use freedom of expression quite nicely, but they do not own newspapers and they do not own television stations and therefore they have more difficulty getting wide circulation of those views.

I was surprised actually when I started studying in this area, which probably was not as long ago as you did. These things seemed to me to be very insubstantial and airy-fairy and philosophical, and just in a very short period of time, four or five years, we have committees of the Ontario Legislature studying them in this way. I think the process of public education is going along very nicely and at some stage, maybe not in this round but at some stage, I am sure there will be some greater formal recognition of them as rights because I think they are the only answer to the problems our society has. Social policy is not answering the needs of the people and so you give human rights a try and see what happens.

Mrs Mathysen: Generally you seem quite prepared to do all kinds of studies to determine the costs—or the burden, some would say—of economic and social rights like food and housing on our society. Has anyone ever done a study to determine the cost to our society if we do not fulfil these basic rights for vulnerable people?

Mr Robertson: I do not know. I asked a social worker that question about a month ago with respect to children who were deprived of various things. We all assume that children who are not well fed are more likely to grow up to be criminal or intellectually handicapped and those kinds of things. I was told there is surprisingly little literature on those kinds of subjects. I think the Ontario government at the moment is funding some studies which are now beginning to address those questions.

It is a very good point, because with respect to the previous question, the right to food or shelter cannot be viewed as just being for the benefit of the individual who lacks food or shelter. I think it is in my best interest that other people grow up well fed and well housed, because that is going to have a direct effect upon the society in

which I am living. That is one of the major arguments I fail to make in my paper but which has to be made in order to encourage public support for these rights.

Mrs Mathysen: Do you think it is an essential step in terms of our maturation as a nation that we have to move in this direction to show we are a humanistic and mature nation?

Mr Robertson: We are all looking for Canadian characteristics. We are all looking for an identity. We are all looking for some individualism from ourselves as a nation, and this would certainly be one area where we have treated ourselves as a community and have established certain principles for ourselves. We have said the entire community is going to have these rights. That would distinguish us very considerably from the United States, for example. I think it is indicative of maturation as a country. It is certainly indicative of enlightened political decision-making.

Mr White: The issue about the inclusion of social rights: To your knowledge, was there was a similar problem with regard to the inclusion of social rights in Europe when these ideas were first brought forth? I wonder if we could learn in terms of our experience.

Mr Robertson: I do not really know what the arguments were at the time that the European social charter, for example, was developed. I am not aware of that. I know that in the Irish example which I cited, those were provisions which were drafted in the 1930s and which, I have read, were characterized by a kind of Catholic social activism which was current at that time. The Irish Constitution tried to set down the principles which were guiding that particular political and philosophical and religious movement at that time. But I honestly cannot answer with respect to other European countries or the European system in general. I

do not know. I would expect the questions to be relatively similar to the ones we are asking ourselves today.

Mr White: When those issues are interpreted in court, would it tend to be the case that they are interpreted somewhat on the cautious side in terms of issues such as food provision and shelter?

Mr Robertson: I do not know too much about what the pan-European courts have done on these issues, and I have not been able to identify what domestic courts have done. With domestic courts, which would be making judgements which deeply affect the political decision-making which has gone on, I think there would naturally be some conservatism in the beginning. But then, as has been the case with civil and political rights, a judge would come along now and again who decided that he was really going to make a point, and he would make the point. There would eventually be some leadership from the Supreme Court of Canada, which has provided very nice leadership in the civil and political area during the last decade. These things would be gradually developed. I think there would be conservatism in the beginning, but then as people understood their rights more and more they would be more willing to really breathe life into them.

The Vice-Chair: Mr Robertson, are there any last words you have for the committee?

Mr Robertson: No, I am just glad you are talking about these kinds of things. Good luck to you and thank you for the opportunity.

The Vice-Chair: We thank you very much for your presentation. The committee will now be adjourned until tomorrow morning at 11 o'clock. Until then we stand in recess.

The committee adjourned at 1649.

CONTENTS

Tuesday 6 August 1991

Anne F. Bayefsky	C-1245
Robert E. Robertson	C-1252
Adjournment	C-1257

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

Chair: Silipo, Tony (Dovercourt NDP)
Vice-Chair: Bisson, Gilles (Cochrane South NDP)
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Harnick, Charles (Willowdale PC)
Harrington, Margaret H. (Niagara Falls NDP)
Malkowski, Gary (York East NDP)
Mathysen, Irene (Middlesex NDP)
Offer, Steven (Mississauga North L)
O'Neill, Yvonne (Ottawa-Rideau L)
Winninger, David (London South NDP)

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Select committee on
Ontario in Confederation

Comité spécial sur le rôle de
l'Ontario au sein de
la Confédération



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Table of Contents

Table of Contents for proceedings reported in this issue appears at the back, together with a list of committee members and other members taking part.

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at (416) 325-7400.

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Table des matières

La table des matières des séances rapportées dans ce numéro se trouve à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et des autres députés ayant participé.

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au (416) 325-7400.

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

Wednesday 7 August 1991

The committee met at 1106 in room 151.

DESMOND MORTON

The Vice-Chair: If we can have everybody take their seats, we will get under way with this, the second day in the second week of our hearings in regard to the Constitution. We have with us this morning Mr Desmond Morton, who is a history professor at Erindale College of the University of Toronto. As I understand it, Professor Morton is on a one-year research leave. I imagine you can fill us in exactly. Welcome to the committee.

Dr Morton: Thank you very much for inviting me. I confess I hope it is an honour unsought. Your long-suffering clerk can testify that I was notified that you needed me to attend on 14 July, but I got the notification about five days ago because I was buried in the archives under a pile of court martial records and they only noticed my feet. Since then I have done whatever was possible within the distractions of a couple of lectures and a long weekend and trying to make a textbook sufficiently bland to satisfy the censors at the Ministry of Education.

I was asked to address the specific question of Quebec's future in Canada. Let me, however, take advantage of your patience to make an old-fashioned and unfashionable plea for constitutional minimalism. It happens that the textbook I am trying to write is about the Confederation process in the 1860s. One of the things that struck me again and again was how pragmatic those people were and how perceptive. What an enormous problem they had to solve. Indeed, taking advantage of my position, I have probably tried to describe the Canadas of the 1860s in terms reminiscent of those of the 1990s. They went at the job with some imagination, a lot of experience and a great willingness to leave the future to solve its own problems, perhaps too much willingness. As you probably know, they left out even an amending formula.

Years ago, when I was first looking at constitutions, I was invited to remember the words of a shrewd but unfashionable 18th-century person called Horace Walpole. "Everybody," he said in 1753, "talks of the Constitution but all sides forget that the Constitution is really very well and would do extremely well if they only let it alone." I also recall the warnings of a recent Prime Minister that constitutional reform would be a Pandora's box. How strange that it was the same Prime Minister who unlocked the box and let it all out.

Part of the problem, part of the temptation of constitutionalism, let me suggest, is a very human desire for immortality, the irresistible pleasure of trying to share in the creation of a supreme law that will bind all future generations, to be like the founders of the United States, a common model in constitutions, so common in fact that few people realize it is almost unique, because whatever the

parents of any constitution may believe, time and lawyers will make monkeys out of them all.

As I came into this building, I was of course properly respectful of that great advocate of the federal power of reservation and disallowance, Oliver Mowat, who of course in due course would become an equally great critic and opponent of the federal power of reservation and disallowance. Consistency was a hobgoblin that never troubled the Christian statesman, but his inconsistency gave much pleasure to his enemies.

I was to address the issues on page 6 of the select committee's questionnaire. I do so with modest qualifications, a Canadian historian who has inevitably had to deal with the Quebec-Canada relationship, who was exposed to these mysteries by such ruthless antagonists as George Francis Gillman Stanley, who hated J. Murray Beck, who disagreed profoundly with M^e Guy Dozois and left this particular student quite confused and capable of confusing others. But confusion is fairly easy to come by, as I am sure honourable members have come to realize.

This is a country whose people assure pollsters, whether they do so in French or in English, that they very much want to stay Canadian. But then English-speaking Canadians overwhelmingly tell us that they want a strong central government, no diminution of Ottawa's powers, even centralization of such traditional local responsibilities as education. Québécois, in contrast, insist with equal fervour that there must be significant decentralization of federal powers, often going beyond the traditional agenda of powers associated with Quebec's linguistic and ethnocultural distinctions.

In short, Canadians want to stay together, but their way of doing so is defiantly asymmetrical. Indeed, that asymmetry can be traced back through most of the years of this century, which leads me to believe, after many reservations and much heart-searching, that if Confederation is to survive, it must do so reflecting the people and their attitudes and will survive on an asymmetrical basis. The alternative would be a painful, incredibly costly, potentially dangerous secession whose only outcome, win or lose, would again be a kind of transcontinental asymmetry.

The alternative to special status—"statut particulier"—for Quebec was always special status for all. Indeed, cynics used to argue that this was the policy of the former Prime Minister, Mr Trudeau. If it was, he could trace a virtuous consistency in such a policy all the way back to his constitutional writings of the 1950s, because he argued then, as Eric Kierans has argued since, that Ottawa in the 1940-70 period invaded vast realms of provincial jurisdiction from income tax to health insurance.

I think historically this version of Canada has some foundation, but it also has more than ample justification. The version of war socialism over which Prime Minister

Mackenzie King presided with his characteristic mixture of anguish and pleasure gave Canadians, after all, the foundation for the great age of affluence in this country from 1945 to 1975.

By the 1951 census, a remarkable thing had happened in this country because of those wartime policies. For the first time since income figures were collected, suddenly a majority of Canadians were no longer poor. By 1961, in fact, it was possible to become outraged that 15% of Canadians were still trapped in poverty. I think it is not entirely uncorrelated that the proportion of Canadians who are definably poor has increased with the renewed decentralization of federal social and economic policy, because it is politics and economics, not the Constitution, that made it possible for Canadians to establish national standards of education, health care and economic security.

As a supporter and, frankly, as a beneficiary of that development, how can I condemn it? I cannot forget my pleasure through the 1960s as a former Premier of this province, Mr Robarts, was driven successively from free enterprise medicine through OMSIP to OHIP. Has Ontario forgotten that the capital base for 22 community colleges came from the Canada pension plan, a national program with an asymmetrical foundation? Indeed, I sometimes think maybe some of the money may have spilled over to build my own campus out in Mississauga. Because of that, I want the arrangement to continue, and I believe most Ontarians do, and I believe most Canadians do, but I know most Québécois do not, so I think asymmetry makes sense.

Is it really the end of Canada if democratically, and with opportunities for subsequent second thoughts, people of different provinces develop different priorities and different goals? Was it right or was it wrong that Saskatchewan in 1948 took the opportunity and found that it had the right to create Canada's pioneering universal hospital insurance plan? What if the federal government had insisted that, true to its ideological principles, national standards for day care would insist on free market discipline, that day care was a service that in Canada should be provided on a for-profit basis? I know that principle would satisfy some members here present; it would appal others. Should that national standard be imposed on every province in Canada? We have become accustomed, on the whole, to seeing national standards that suit certain ideological frameworks. What if other ideological frameworks were imposed? Would national standards then have the same solid support that, for example, the policies on medicare have enjoyed?

Provinces, after all, have democratically elected legislatures. We have evolved from that day when Oliver Mowat, as a father of Confederation, thought it wise that Ottawa reserve or disallow provincial legislation because in his view and in the view of most fathers of Confederation provinces were really like the colonies, and the colonies, of course, had been run by the colonial office.

Let me repeat: I would prefer if Canada had a strong central government. There are many things I would prefer in this world that bear no relationship to the realities of this world. I think there are many powers, from education to

the environment, that might be better managed and could certainly be well managed by a strong central government.

I am one whose schooling dragged through five different provinces and ended in a sixth. I managed, incidentally, in that process to avoid algebra every year until I ended up in an engineering faculty in a small Canadian university. It is possible to do things like that in Canada. More and more Canadians do travel, are pulled from province to province by mobile parents. It is not something we should discourage, but provincially based, indeed even locally based, education systems make that more difficult.

But the idea of a unitary Canada, strong in the minds of Sir John A. Macdonald and some of his colleagues in the 1860s, could never survive the realities of Canada. In the closed sessions in Charlottetown and in Quebec City in 1964 no idea other than federalism surfaced because no idea would have been tolerable to the French-speaking minority in that old Canada, and no central, single unitary government would have been acceptable either to the people in the lower provinces. I think that without Quebec in the 1860s there would have been no Canada; and, in my view, without Quebec in the 1990s there really is not much Canada either.

1120

That is why the arguments for asymmetry, with all their difficulties and dangers and disadvantages, finally appeal to me. I think it does create the possibility for national standards in most of Canada. It creates the possibility of co-operation and integration of services which most Canadians outside Quebec describe as a goal of political reform. No, it does not inspire ecstasy in me, but then I viewed most of the constitutional changes since the Victoria Charter of 1971 with profound misgivings and occasional dismay.

As I look through the full paper that Mr Brown provided me, with its seemingly endless opportunities for self-interest and special pleading, my soul might be chilled if I did not trust honourable members here present to dispose of them with appropriate courtesy.

I wish sometimes, as you may, that Senator Eugene Forsey could be here when I need him. He would probably, of course, denounce asymmetry too, with devastating logic. Unfortunately the late senator was more fertile in devising absolutely flattening and devastating aphorisms than he was in inventing expedients to help the country through its next stage.

Asymmetry would create a distinct Quebec. Frankly, has Quebec been anything other than distinct? Would it be less asymmetrical if it separated or if by some force, unpleasant and unrealistic now to conceive, it was persuaded to abandon its claims and become a province *parfaitement comme les autres*?

Asymmetry would, of course, create a precedent for other provinces to demand their own distinctions, but is there a province, including Ontario, that lacks some entrenched constitutional particularity?

I have spoken longer than I should have. I have probably repeated arguments that honourable members here present have heard before. Repetition may at least create an impression of validity.

May I wish you well with your difficult and important task. I hope that you have the success and I know that you

have the ingenuity of the framers of that original British North America Act. They too laboured through a hot summer in 1864 to prepare their resolutions. They did not, of course, have air-conditioning or microphones.

The Vice-Chair: Mr Morton, I would love to hear another 30 minutes of what you had to say, I am sure, as would most of the other people of the committee, I think.

Your presentation is obviously well thought out and raises some interesting points to which, I am sure, there are many questions. We will start with Mr Malkowski, and other people, if they want on the list, please indicate.

Mr Malkowski: I was impressed with your presentation and your comparisons in history. I would like to talk about one thing. If you are saying you noticed a relation between less federal powers and an increase in poverty—is that what you are saying is one of the reasons that it is happening in the 1990s? Can you explain that point a little more clearly, please?

Dr Morton: Correlations are not necessarily causes. I think Canadians have lost a little faith in their capacity as a country to cope with problems. They have indeed elected a government that feels, with perfect legitimacy in its own ideology, that who governs best governs least, and it is a government that therefore wishes to remove itself from a number of activities that its predecessors had taken up.

I think there are many other reasons why Canada has fallen, and they go back a long way. The willingness to take our affluence after 1945 for granted, to assume that it was some God-given inevitability, rather than something that was a blessing to be used and exploited and planned and developed and sustained, those were failures which all of us in this room are of an age to have shared in. We took our blessings for granted, as the blessed often do, and therefore our blessings have, to a degree, been taken away from us.

Since 1978—I think the OECD figures are eloquent if not often quoted—the average real income of individual working Canadians has fallen in most years, a development that is usually concealed in many families by double incomes but is tragically evident in families, particularly mother-led families, that are single. But that is a development of very significant economic magnitude and I do not think has to be related necessarily to a political development. Perhaps one consequence of that sense of frustration and failure has been to blame government for failings that are perhaps more widely social, because after all, we have governments in this country that usually tell us that what is done by government is done badly and that they should be re-elected in order to go on doing it.

Mr Winner: Some months ago, Professor Morton, near the outset of these hearings, we heard from John Crispo, who appeared to favour asymmetrical federalism at that time and gave it some currency. In light of the Allaire report and Bélanger-Campeau's position, which seems to be more procedural than substantive, just how far will you go in the direction of asymmetrical federalism? Will you repatriate all but, say, four powers to the provinces or would there be a median position in between?

Dr Morton: There would be, I hope, a median position. I hope that this is a matter of negotiation, and by

suggesting asymmetry I am trying to do two things. One is to counter an equally common argument I am sure you have also heard: that all provinces must be treated equally and all Canadians with the possible exception of first nations must be treated exactly the same or else it is intolerable. It is not intolerable to me, and I think it is not intolerable in the light of Canadian historical and constitutional experience. That is probably the one simple argument I am trying to make here today other than the usual one, which is, if it ain't broke, don't touch it.

I think we do not have to go with the whole string of Allaire transfers from Ottawa, but I think we have to be realistic in accepting some compromise on the present array of federal powers, and we do not have to say, "Because Quebec gets it, every province must have it equally." We do not have to have special status for all.

Mr Winner: I suppose what you are saying then is you can achieve equality without treating each province the same.

Dr Morton: We always have.

Mrs Marland: I too want to say, as always, what a tremendous pleasure it is to hear Principal Morton. On the occasions that I have been fortunate on a one-to-one basis to have this discussion on Confederation with you, Des, I have always learned a great deal, and I have learned a lot more this morning listening to you.

One area that you and I have never discussed, and I do not know that you touched on it this morning, is, if we are looking at our nation with its increasingly multicultural mosaic, setting aside the interests of the individual provinces in this whole debate, how would you suggest that the interests of Canada as a nation could be addressed where we would end up that everyone who lives in Canada, fourth and fifth generations and new Canadians of six months, would know what Canada stood for, what a Canadian is, what our ideals and our goals as a nation for people would be?

1130

Dr Morton: We could try to improve the level of understanding. We will never achieve it for all people in all times in all stages of development and understanding, and indeed it would be wrong to even dream of trying. I am always struck, as someone who participates in the media as commentator and of course as reader and listener, by the fascinating range of levels of knowledge on the part of people who, by their position, are assumed to have very wide knowledge. It is amazing how little Canadians know about how their Constitution works or how it has evolved.

I am told that is because the subject is boring and therefore nothing should be taught that is boring. I have fairly strong views about how history should and should not be taught in the schools and universities of the province, which I hesitate to bore you with but might be tempted to do so.

But let's remember one thing. Achieving a kind of universal, common understanding of Canada by all Canadians and all people who live here is a chimera. It cannot happen. It does not happen in the United States, where we know a tremendous effort has been put in for a century and more to achieve this melting pot understanding. There is a

certain level of pride and a certain level of knowledge of their country that many Canadians might envy. But a great many Americans do not understand their system either, have very little knowledge and have very little share in it. After all, how many Americans vote in elections, which is a fairly significant test of participation and involvement in the constitutional system.

I would like Canadians to be more interested in their own affairs. I think—obviously because I teach and have a vested interest in promoting the cause of Canadian studies—they are fascinating. I think they are complex. One of my arguments is that they are adult entertainment. Maybe we make an awful mistake in this province by trying to put a lot of Canadian history at a low level in schools when children are bored by history, cannot understand it—this is Piaget as applied by my good friend at Queen's, David Pratt. If you do not understand something, it is hard to grasp it.

If teachers themselves hated history when they went to school, are not specialized in it but have to teach it because of the grade 6, 7 and 8 curriculum, they are not going to teach it on the whole very well. Some, superbly; many, not at all. Yet that is the level at which Ontario children learn about their country, and they emerge from that experience—let me testify as someone who meets them somewhat later—with an absolute hatred and a profound ignorance. I think history is wasted on the young. It is one of many things that are wasted on the young. I think the curriculum of Ontario would be better structured if it came later in the program and was taught by people with greater enthusiasm for it. But that is only one segment; that is the young. We can always victimize the young.

I think older Canadians should be taught what a thoroughly fascinating and exciting and problem-filled thing our history and our constitutional development is. It is not boring. It is something for specialists. It is quite as fascinating and much more complicated and even more entertaining than American history. Look at the role of liquor regulation in the development of the Canadian Constitution. Look at the role of sex in the development of the Canadian Constitution. There are many lovely, dirty stories. There is a level of possibility of entertainment for every brow, from simian to enormous. You have got me on an enthusiasm obviously, but—I will stop.

Mrs Marland: You referred to—

The Vice-Chair: Excuse me. I will allow a supplementary and a very short question after because we are running late.

Dr Morton: I am sorry. I go on too long.

Mrs Marland: That is fine. You referred to the United States, and that is part of the comparison we all are faced with. I hear constantly from Canadians, when we are into the discussion of the future of Confederation in our country, about why we do not have the passion in our hearts. We do not grow up with a passion in our hearts for Canada; we do not have our children swearing an oath of allegiance to their God and their country as they do in the United States. We do not have a national identity, and therefore the melting pot that is achieved in the United States is not achieved to anywhere near the same degree in

Canada, and the more that we become diverse in all of our interests in Canada, with our changing face—what I am asking you is, how can that be achieved through the review of Confederation as an overall subject? I agree with the knowledge of history being a very important tool starting in schools, but how do we become nationally proud of our country and know what our country is?

Dr Morton: We could go through the experience the Americans went through, but let me remind you of how the Americans discovered the American way of life. John Ingham's book on American nativism and American pride is worth looking at. It occurred in conjunction with two major American events. Until the 1860s Americans were no more conscious of old glory, American values or anything else than Canadians are. It took the American Civil War and the post-war hostility to immigration, particularly in the 1880s, and the emergence of an American nativism that in more modern language might be called racism, because it did not include black Americans, though many black Americans wished they could have been part of it. They were not seen as real, 100% Americans.

It took another war, the First World War, when the Americans went through a passion of nationalist enthusiasm which excluded not only blacks, because Jim Crow got worse in the First World War. Black American soldiers who returned were lynched because they had become uppity. That is part of the American experience of developing this so-called melting pot.

Finally, most modern American historians talk about the melt that did not melt. Americans are still hyphenated, so you have communities that are Polish-American, Ukrainian-American and Finnish- and Swedish-American, and Canadian-American communities called the Canuckvilles of New England. You can exaggerate very easily the effect of nativist propaganda because nativism has been a major theme in American history, but the number of people it has excluded is very important and tragic. You can do that in Canada but I am not very enthusiastic about that way of doing it. If we had a Quebec secession, I predict not only violence in that process, but the surviving part of Canada would be narrower, meaner, very nationalistic or else it would dissolve.

One of the great examples of separation is Norway and Sweden. Not a drop of blood was shed. Many were threatened, but at the end of the Swedish-Norwegian breakup Sweden became so intensely nationalistic that it refused to allow any other language to be taught. It compelled its people to go through profound indoctrination in the values of Sweden. They thought if they had only done that to the Norwegians, they would not have dared leave. Even a generally beneficent, lovable country like Sweden, in the reaction to a civil war crisis, lost much of its internal tolerance for ethnic diversity, and I do not think that either is something—I think Canadians can be proud of being a diverse people, of accepting divisions, and you get to live with it and like it. I wish more Canadians would go abroad to see what a wonderful place this is. It never looks better than when you are looking from outside in.

The Vice-Chair: Thank you very much. This left me a little bit speechless. I am going to answer a very quick question on the part of Mr Offer. We are going over, but—

Dr Morton: Sorry. It is my fault.

The Vice-Chair: No, it is quite all right. What you have to say is important.

Mr Offer: Thank you very much, Mr Chair. I do have a very short question. It has got a number of parts to it, but—

The Vice-Chair: At this point, one question.

Mr Offer: I know you are sensitive to this.

Professor Morton, thank you very much for your presentation and indeed your responses to some of the questions. When you spoke about asymmetry, is it your position that there should be a devolution of powers from the federal government to provincial governments but not necessarily the same powers to each provincial government?

Dr Morton: That would be my position. My preferred position would be that Quebec is a different province from all the others. Quebec's people feel differently about how this country should operate from the people of all the other provinces. I think it is fair to say, with the possible exception of Newfoundland. When asymmetry comes up I see it as a Quebec-Canada asymmetry. I do not see it as 10 different provinces with 10 different sets of beliefs, but that too is conceivable to me. I do not regard it as desirable.

Mr Offer: Mr Chair, I wanted to get that just before I asked my question, if I might. I just wanted to truly get your position as to what is the possibility; we have heard this a number of times. If that happens, how is it that the federal government could impose standards on those powers they have allowed to devolve to one or more provinces? Second, what is the feasibility, if not the practicality, of that type of devolution in fact happening?

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Dr Morton: To answer the second question first, I suppose if it cannot be managed in the Quebec-Canada context, there will not be a Quebec-Canada context of Confederation; there will be something else. That is my perception of the scene. I hope I am wrong.

How can national standards be imposed? I think that equalization provides the control, and within, equalization standards may be different. That may be one of the consequences you have to accept as part of an asymmetrical Confederation.

As I said earlier, if I had my druthers it would not happen. All the people would be like me, sensible and reasonable. But it is not so and it is not going to happen. We inherit the country we have inherited, with blessings and damnation both. So we have to accept the national standards may be local, but remember one standard we do have: People have the right to change their government, federal or provincial. People have the right, within the framework of equalization, to have what they want wherever they live. If one province devotes its resources to education and another to health, to put a terribly simple case, then that is the decision of the people of that province. They can change the government and reverse its priorities.

The Vice-Chair: Thank you very much. If you have any other last words to share with the committee at this point, Mr Morton—

Dr Morton: I will not rush away.

Mr Curling: I have a quick one.

The Vice-Chair: No, at this point we have another presenter waiting and we are already 10 minutes late as it is.

Dr Morton: I apologize.

The Vice-Chair: No other words at this point, Mr Morton?

Dr Morton: No, except to thank the honourable members for allowing me to come and share my views. If they wish to know more about them, I will leave a copy of this monstrosity, complete with all its typos, for their special benefit. Of course if you wish to talk to me, I will be available in this country until August 13, when I depart to do more research into the Canadian Armed Forces in the First World War, a social history of the Canadian Expeditionary Force, 610,000 men and 15,000 women, a very unfair balance.

The Vice-Chair: On behalf of the committee, Professor Morton, I would like to thank you for taking the time and coming to present to the committee. As you can see, I have a speakers' list. It still hangs with many, many names of people who are going to come and axe me after you leave because they did not get a chance to ask questions. I want to thank you again and wish you the best in your work in the future.

Dr Morton: Thank you very much, Mr Bisson.

DAILY BREAD FOOD BANK

The Vice-Chair: Next we would like to call Gerard Kennedy, who is the executive director of the Daily Bread Food Bank. If you would come forward, please.

Mr Kennedy: Mr Chairman, members of the committee, I have already appeared here once, briefly, as part of a four-group submission. One of the main points at that time was how uncomfortable we felt being called upon to represent low-income people. We wondered what the committee had done to reach out and ensure that in its process, if not in its conclusions, the considerations of low-income people had been included. I think at the time people remarked that that would take a special effort on the committee's part. I do not know if that effort has happened. I certainly recommend it to you if it has not.

The point of view I can bring to you, in terms of some of the considerations you have outlined in the questions that were sent around, is basically that of a witness or observer to conditions in this country over the last 10 years that have begotten the rise of food banks, of public begging and of a diminution in the quality of life for hundreds of thousands of Canadians.

With specific respect to the ways you have shaped your deliberations up to now, the idea of a preamble and a social charter, or of modifications to section 7 and section 15 to include economic and social rights, is something I think the committee and the country, in terms of its search for

definition and for ways to engage the average Canadian, should strongly be considering.

The nature of a social contract or a social charter has to be the definition of some of the deeply held values of the country, yet tempered by the reality of the conditions. We have had a change in conditions and I think we have a sense of elusive values, especially in respect of the rapid economic change of the last 10 and 15 years.

Again, speaking from the perspective of a non-poor person who has been exposed to some of the harsh realities low-income people have to deal with, there has been an exclusion that is fracturing, both for the people who are excluded and the people who are on the other side of the barrier or the fence, if you will. Canadians are shaking their heads and wondering why we have people going hungry in this country.

One of the things a social charter must include is a right to food. Let me explain that to you. Let me dwell on a right to food in this country. We are already a signatory to international covenants that guarantee a right to food under the United Nations, but we do not have a right to food in this country. I want to dwell on how badly we do not have a right to food and what the implications are of inserting a right to food or a right to some basic level of existence that is common with citizenship or with being in this country.

Article 25 of the Universal Declaration of Human Rights and article 11 of the International Covenant on Economic, Social and Cultural Rights are agreements to which Canada is signatory, but in the international forum they have as yet proven to be ineffective in terms of really having a live-a-day effect on how Canadian institutions regard low-income people.

The right to food is one of the most basic things. It is not a given in this country. Let me explain. In this country we have a deceiving situation where there is apparently the availability of running water, electricity and shelter and where there are modern conveniences. Yet somewhere—in the case of Toronto, 120,000 somewhere—there are people trapped in that illusion of an egalitarian society, people who have to pay their rent and their utilities, who would go to jail and who would lose many of their rights if they did not, in consequence of which they go hungry and without the adequate basic nutrition they need for themselves and their children, not on a small scale but on a scale that reaches 300,000 Ontarians and almost 700,000 Canadians every single month.

We have a situation that I have observed over the last 10 years, last night, last week, on a daily basis, that does not fit with Canadians' perception of their values about their country. The gloss we have put on the rapid economic change we have entered into with the free trade agreement, with some of the decisions that have been made around the dislocation of industry, about Canada jumping into a cold-water change in its economic system, has shown an utter disregard for some of the basic human values this country has come to pride itself in. Its work behind the scenes in arriving at some of the international covenants is really thrown up into question by the current condition of our society in respect of people who are economically disadvantaged.

The need to have that, above and beyond, included in some form of guarantee in a charter or in an expansion of section 15, or even of section 7, is something that would require some imagination. It is not obviously apparent that people would support the measures that would bring enforcement to that kind of clause. Something in the order of a guaranteed annual income may not be where the public's attention is focused in the current idea about a government malaise, but if you recognize the ingredients of government malaise, it is a lack of leadership being granted to people such as yourselves who are in positions of power. That leadership is not going to be granted unless some leading steps are taken.

1150

I know the job you have is to define some part of the Canadian imagination, to put forward some part of an ideal. I think we have an opportunity, based on our tradition, based on our sensibilities as a country, to codify some of those instincts, some of those things which paradoxically, and in some people's minds perversely, food banks have come to represent, a certain type of enlightened compassion, the kinds of things that make hundreds and thousands of people exert themselves.

We are finding as we do surveys, for example, outside firehalls, that people donate food not as a beneficent sort of thing, but in a bloody-minded effort to make sure people get their food. The kinds of notes we get with donations these days are of that nature, encouragement to go after the elimination of food banks, to go after some further step which would distinguish this country.

People are bewildered. The people who use food banks find themselves in the most awkward position of their lives. I want to stress that it is hunger they are experiencing. Speaking as an original westerner, the food bank in Toronto, where wealth is at its most conspicuous, is very real. Right now we are giving out less than 45% of the food people need to subsist on. Never mind what they have to do the rest of the month, but on a three-day-a-month basis, which is the allotment that comes through the charitable organizations called food banks, we are giving out only that quantity in total. In respect of children, we are giving out only 25% of the milk requirement that is needed. Definitely those people are depending on that for those three days and they are not getting it. They are not getting it from us and they are not getting it from a system that fails, when you add it all up, with all its twists and turns and the desultory methods by which we assist people these days.

I do not know how many of you have been engaged in some of the so-called assistance systems we have in the country. They are not where rights are revealed. They are not where rights are lived up to. The economic minority of people living in poverty are put through a tremendous usurpation of their rights by engaging these systems. There is a nickel-and-diming of their dignity, and perhaps what we need is a right to dignity in this country. Just as other countries have chosen a right to arms, maybe that is the route we need to go.

There is no recourse. The Canada assistance plan de facto guarantees food, clothing and shelter. It compels the

provinces to live up to that basic standard. It is not enforced by the federal government.

In the context of the deliberations you have before you around the devolution of powers, around the aspirations of Quebec to find its own milieu, it is even more important to see if the concordat between the French and English constituent representatives of the country cannot include some overarching social purpose. As a Canadian, as someone who took Canadian studies, who has had something of an involvement with different aspects of Canadian society, it would be my estimation that if there is no social purpose to a country such as Canada, which is founded, at least in its last 50 years, on some measure of social achievement distinct among civilized countries, then there probably is not going to be a purpose. You cannot just have a clinical accommodation.

I speak not then just for the low-income people who conceivably might benefit, but for the larger group of people who are interested, who form a constituency of concern in this country. Instead of that being palpable and evident, that is not the first thing you list when you are asked your priorities—the needs of other people, the poverty that exists in our various communities. But when other questions are asked, when it is revealed, it zooms to the top of the list in terms of people's concern.

That concern can turn into apprehension. There is no question that the economic uncertainty makes your job that much more difficult. The challenge we have in terms of economic turnover makes it even more important and more viable to consider some form of economic right that entitles someone to basic food, clothing and shelter. A right to food would suffice. If you guaranteed a right to food, you would have to guarantee the conditions under which that could be attained, because everything else is purchased ahead of food. Food is a flexible item in this country.

Several weeks ago, someone called me who has worked for 12 years: A young woman who has a disease, is unwilling to reveal the condition to people and went for five days without food, five days living in her apartment in the Yonge and Eglinton area without food because she could not contend with the systems we have.

The codification of that right is practical, yet it is perhaps more importantly symbolic. If we, and if you as the representatives who have been given this job, do not pull together some kind of definition which says that people are of worth, that the equality provision includes people who do not have economic wherewithal, then the attitude that has someone go without food for five days, when it is the converse of what she needs for her health condition, will prevail. We have this isolation of the pride of the individual on the one hand, and the denigration of society on the other, and so you have one of those Canadian secrets. It is about time to bring it into the open.

I think you are properly dealing with the rights and the needs of aboriginal people. As someone who grew up in The Pas, Manitoba, I am certainly aware of what a poor reflection that is of what would tend to be the stated, shared values of Canadians. But I am similarly taken with the idea that the hidden poverty, our inability to acknowledge

it and address it, is another malaise we cannot contend with for that much longer.

The recession puts us in a position where people may choose to believe that the state, the country, the politicians, society cannot do anything about it, and that path is perhaps the one that has been taken south of the border, where we cannot do anything about poverty, where we cannot ameliorate the situation, where we simply accept it, a country that accepts people going hungry for no good purpose.

People go hungry because the mail is late. People go hungry because bureaucrats do not have the ability to make decisions. Fifteen per cent of the people we serve are sent directly from a social worker's office, who spends as much time referring that person in terms of cost to the government as he could in terms of issuing the value of the food we give them. There is a whole illogicality that I wish I could take more time to interest you in, because it is a tyranny of absent-mindedness in its kindness, that after ten years of food banks, we are really learning whether it is a lack of knowledge on the part of the Canadian public or whether there really is some kind of basic sensation that we need to have poor people that perpetuates the situation.

I think the existence of food banks, the emergence of conspicuous poverty in places like Montreal, Moncton and parts of Toronto is something that is on people's minds. It is something that undermines their confidence in the institutions of this country. However, because it only affects directly a minority of people, someone has to declare that in the public interest. Someone has to overarch the arguments that define a certain group of people as particularly lazy, and therefore worthless and deserving of a different code of civility than anyone else. There is the presumption of guilt until innocence is proven in the instance of the welfare system, or increasingly the unemployment insurance system.

Whatever wording is taken in terms of a social charter or an inclusion should be ensured to be a positive wording, to be one that ensures to people the ability to live a basic existence. That reference should be to some form of adequacy that meets social norms.

People talk about this society as having poverty that is relative. What Mother Teresa says about Canadian poverty is that it so relative it is worse than anywhere else, that the relative poverty of somebody who sleeps on a grate at Shuter and Jarvis, or someone who, more insidiously, lives in a basement apartment with a five-foot clearance, with her three kids, with a toilet beside the sink because it is the only plumbing, and with all manner of harassment and aggravation from the landlord, is worse.

It is private. It demands the intervention of the state. It demands the recognition of the state. The dialogue that is happening at the community level has advanced to a sufficient degree that elected officials would find, I think, receptivity to that leap of imagination that would try and define that as a shared common value.

1200

Mr White: Mr Kennedy, there are a couple of things I want to pick up on from your commentary. One is the issue of rights, how the committee has involved the extremely poor. I think that is particularly problematical. I think you

are absolutely right with regard to the social services systems, the way in which they have worked traditionally. "We have all these marvellous services, but we are not going to tell you about them," so if there is an appeal, the comment can be made that the service was available. It is somewhat like the wounded who have to apply for aid not being told of it.

I am aware that in the last while there are a number of steps in that regard, in terms of the welfare reform the ministry brought in, and there are active steps that would make people aware of their rights, of what their range of programs is, and of course there is the Advocacy Act.

We had a presenter last week who spoke in great detail about some rights issues that she had enabled at the Supreme Court level. However, there was not a discussion about how the Constitution, or our contribution to that, could be amended to reflect the need to empower people, the need to have people of all walks of life and circumstance reflected.

Very obviously, if you are hungry, you are not going to be coming to Queen's Park and participating in the lobby; you are going to be worried about, "Where will I get food?" the basic stepping stones of life, which is why you have people like myself and people like yourself, who are middle class in background, being the people who are most vocally representing that constituency of concern you mentioned.

I am wondering how you would see an increase in empowerment of participation for the poor, an enabling in terms of their rights brought into this process, and possibly brought into a statement of what we are as Canadians, a more visionary statement.

Mr Kennedy: In the instance of rights, if you look at the charter, most of the things that exist are protections, protections against discrimination on certain grounds. Economic disadvantage is being tested through the charter challenge program as to whether that is included in that level of discrimination. Making that clear would afford people in poverty some protection from the kinds of conditions they experience now. There is no protection, because ultimately the guarantees we have now are whimsical.

What exists in Ontario, the recent reforms notwithstanding, still does not match some of the things that were done in Alberta many years ago. The steps taken in Quebec to introduce a level of workfare are aggressive steps. The steps taken by British Columbia, when learning under a charter challenge that single and married people had to be treated the same, were to cut everyone back to the same level.

The way is to reference that to some kind of objective standard under which it can be set. In no jurisdiction in this country, Ontario included, is the level or type of assistance referenced to some kind of objective standard, in respect of which you have within that some kind of very basic reference to an adequate standard of living, to something of that nature.

The question you ask around opportunity, or at least define it around how to empower people: The main empowerment that most low-income people need in my observation is protection, is to change the condition of poverty from one that drags them down. It is a self-fulfilling condition, the way we define it in this country, and the way

we focus things, because you do not have the ability to fight back. You have to put up with an illogical system, as you encounter it systematically and also attitudinally.

In terms of the other aspects of how to empower people, the right to education, in terms of that being a lifelong right, in terms of that being an expansive right from where we have it now—the people have their first or second, their third and fourth chances, which is not at all clear, for example, when people on assistance are not able to go back to school and receive assistance in many cases, when that is exactly the kind of thing they need to adapt in terms of the changed circumstances in the economy. Other things that could be included in a social charter, but especially education, would address the need for people to expand their opportunity.

But I cannot emphasize enough how some positive statements around the rights of the economically disadvantaged, in other words, to not be discriminated against, or a positive statement around the standard of living for all Canadians, would allow people a totally different environment, at least legally, than they exist in right now.

It is a nickel-and-dime situation. Battles are being fought, in the case of the Finlay decision in Manitoba, about a \$25-a-month benefit, and it has taken the gentleman, who carries his legal books around with him on the street, 12 years to get it to the Supreme Court, which has reserved judgement on the efficacy of the Canada assistance plan.

I guess the perspective I am presenting is that, in total, the overall thing is a desultory process. It is not just a bureaucracy. It is a denial of what it is supposed to achieve in the first place, and it is because I think the laws that have been arrived at up to now are not prepared to state clearly that being in this country means you have certain inalienable economic rights. You can drop as far as humanly possible in this country, given the systems that exist right now.

Mr White: One small question further, and that is very simply that it struck me that the countries where there is a social charter in regard to a right to food in Europe are countries which are actually objectively the poorest in Europe. Those things are taken for granted perhaps in some of the more northern European countries, but in Spain and Greece, which are certainly not the wealthiest of countries, it is accepted. It is part of their charter. It is part of their Constitution. Yet we seem to have a tremendous opposition in this country, in this province, in this community, to such basic nutrition. Do you have any reasons why you think there would be that opposition?

Mr Kennedy: First, the inclusion of a right to food, as I say, is basically someone deciding an argument. Are people who find themselves in disadvantaged situations there largely through no fault of their own? Do we systemically produce people, or is this a class of people who fail, who are there because of foibles of their own? That is where a lot of the resistance in this country arises from.

What I am encouraging towards is some positive definition of people in general that would encompass low-income people. They need to be specifically included and regarded positively. In other words, you cannot in the main overcome that opposition where it is deeply seated, but also in the main, 84% of the people in Toronto are deeply

concerned about the fact that there is hunger in this country, according to a Gallup poll last year. It is a startling kind of recognition that is out there. It speaks a real—not just concern, but people are somewhat frightened by that change in their society.

What I am recommending to you is that while it is not smooth sailing, a large body of people out there will support that kind of positive thinking, and someone has to take a stand. We cannot equivocate without doing damage to the fabric of this country, because it is precisely the institutions that make economic decisions that have brought about so much change so rapidly that have gathered up a whole other group of people into the conditions of poverty.

Mr White: So you are suggesting it is only a minority of people who are—

The Vice-Chair: I am sorry, Mr White. At this point, unfortunately, I have to go to another questioner. We are running out of time. Does the committee wish to go a little bit longer? There are still two other people who indicated they had short questions. Do you want to go on for an additional five or 10 minutes?

1210

Mrs Marland: I think at least each caucus.

The Vice-Chair: That is what I was going to do. That is why I am asking. Okay, Mr Curling.

Mr Curling: Mr Kennedy, I agree with you. There is no doubt that in this country there are people who are homeless, people who are poor, people who are illiterate and people who are discriminated against. How would you respond then to the fact that Principal Morton stated earlier on—which struck me; I want to believe this—it is not really the Constitution that creates wealth or poverty, but policies and economics of governments or whoever creates those policies and economic theories that people follow that create this advantage situation?

Mr Kennedy: I think the idea of a legal protection is more a direct encouragement to government and a reminder of its responsibilities than it may be in terms of practical effect upon the rest of society. There is a supposition about government that, beyond protecting private property and preserving the public order and so on, is the public good. That has quite often encapsulated a special responsibility towards the disadvantaged in society. In other words, we have tempered our market economics here with a role on the part of the state to offset the kind of things that are brought about by the market. To relegate what is basically, as I said, an act of imagination, of faith, of values, to only economic terms is a loss. Here is a place that you could see Canadians come together through some form of agreement about what their country can achieve for every individual in it. It is not simply in terms of economics that that can be achieved, whether it is full employment policies or whatever.

I think we are in an age of uncertainty around everyone's personal economic status, almost no matter where they stand. It is disheartening to see, and I think as more people become exposed to it, as poverty becomes more visible, that disheartenment will spread, the way we are losing so much potential on people's part because we are

not able to make that jump of faith to say, "This is a moral decision, this is a value decision on the part of the country, to say that in this country of wealth, everyone is entitled to at least a minimal share."

That has nothing to do with the marketplace, because the marketplace, unless you believe entirely in an economic man, in Milton Friedman, is not going to deliver that. It is not delivering that now in spades. The average education of someone using the food bank in 1987 was at 13% having graduated high school. Now it is 43%. The income last year went up by 17%, but the average rent up by 32%. So people's income actually dropped 15%, as it has for every single year.

In other words, it really is a time at which, without judging the marketplace, we recognize what is a long-established Canadian tradition, but in some effective way. I think that the federal government, and in the federal government's absence the provincial governments, have abdicated much of that necessary responsibility. There is a whole re-education that could come with the elements of a social charter that is badly needed in this country.

People are wondering why, for example, rinky-dink organizations like food banks are the only ones to respond to an apparent problem of this nature. Is this not everyone's concern?

I think this is the kind of thing that the Charter of Rights, the repatriation of the Constitution in the first place, was supposed to address. Beyond the pragmatic clauses, there is some allusion to the shared value of Canadians. I think that set of values needs definition and it needs inclusion. I think we need to be telling people that being remaindered economically does not reduce your worth as a person and hear other provisions that say so and protect that. You can only fall so far in this society.

Mr Curling: Are you not concerned too in looking at other situations—and I go to the point of saying racial discrimination or individuals who are discriminated against because of sex or religion or colour—although all these things are written in many documents, and as a matter of fact I am running out of walls to put up all these statements that are written in constitutions, it really does not change things as much as possible, as when governments sit down and go beyond that.

I know it is wonderful to have, whether it is in the preamble, whether it is section 15 or whether it is section 7 amended—and the individual who wants the bread and the nutrition in his mouth or just wants an opportunity to participate and not be discriminated against because of colour, class, creed or what have you—it is policies it comes down to that government must make. If the accountability, the democratic process is not done, then they will seek other parties or what have you to do that. Do you take that into consideration, that as we go through all this—I would call it an academic exercise—eventually the food still did not get to the mouth of the individual because of government policies?

Mr Kennedy: I certainly agree that the organic process of coming up with the policies of the interaction needs to happen, but if you look at the current malaise that you are addressing as larger than just a discontent over constitutional

arrangements, there is palpable feeling, and somehow we have become a lightning rod for some of that, of discontent in where the country is going. We seem to lack the ability for definition. There needs to be an energizing that does come with some form of symbolism.

I think if you look at where the charter has led, it has delivered for some groups of people, but it is not in any kind of hope of an apocalyptic change coming from these kinds of equality-seeking groups incrementally pushing the barriers, trying to define. That is not what low-income people need. Obviously they need more than that.

But the question is, as we consider the fundamentals of this country, will the people who are most disadvantaged in this country in respect of this modern, consumer, material-oriented society be included? Will they be front and centre? It is consistent with Canadian standards and values that they be included. It will not change their lives. It will raise their expectations. But it also may embolden society to demand more rights for those people on a day-to-day basis, on a policy basis.

Yvonne O'Neill was the Chair of a committee here that sat and debated food banks for a period of time. There are other members here, Dennis Drainville conspicuously, who know all about that. There are members in government who have that knowledge, some of whom were and some of whom are in a position to effect policy change, but there is a context that is missing.

I guess the hope is that, as you define what almost seems sometimes to be a defensive posture to the changing conditions, we can afford to be aggressive somewhere, we can afford to push and say: "Here is what Canada is about. Let's debate this. Let's get that on the table," because the insidiousness about this type of discrimination is that it is not on the table. It happens, it occurs at every level of people's lives, and it is not there. We still have almost a punitive attitude about low-income people.

So that would be my argument: full recognition of the reality that things will not change overnight, that it is an academic exercise unless you take it down to some of the community centres, and even then it is not going to draw a lot of people's attention. But I think it is your job as politicians to try and see whether the framework of the laws is going to provide something. I am just saying the framework does not do that now and whatever could happen will happen much more quickly and with more definition if this is part of the current re-evaluation of where the country is at.

Mr Harnick: I do not know how different my question really is, but what you said is that the codification of the right to food is practical as well as symbolic. In terms of the practical, what do you envision would happen or would be permitted to happen by government or through government if the right to food or a social charter of some sort was able to be written into the Constitution, from a practical point of view?

1220

Mr Kennedy: A practical point of view would be, for example, if people were faced with eviction, if they were objectively in the position where their income was such that they could not afford food, that they could not be

evicted, that there would be protection for people living in states of marginalization, something that would put forward the primacy of their integrity as individuals.

In other words, you cannot degrade yourself by not feeding yourself just to subsist in society. The nature of the obligations that attend that right would have to be defined, but the implication now is it is very easy for someone to go hungry, to become unhealthy, to become a burden on the state in this country. It is ludicrous when you look at the kinds of resources that go chasing their tail trying to make up for it afterwards. There would be a right that people could invoke, a threshold, a floor which they could not fall below. For example, municipal laws: When you have a situation like Toronto where you do not deliver housing for people of a certain background, where cabinet ministers actively talk about possibly moving people to other parts of the province, they have lost their right to participate in that society.

There are municipal governments and so on that might have to meet the test of inclusion for people who really have been treated very hostilely over the last six or seven years. So I can see it having that kind of effect, that where you have now an environmental procedure, you would have a social procedure perhaps for various projects of different scope as they change environments around people. In terms of the effective remedy for that right, you would probably have some form of guaranteed annual income at the cornerstone, so there is an objective standard that is met in different parts of the country according to the costs of living for people.

Mr Harnick: Let's assume that government does not enact that kind of policy. Is it your vision that a social charter and the policies related to it would essentially be enacted ultimately by the courts? If you included the right to food or a social charter in the Constitution and the government did not enact the policy, perhaps of a guaranteed income, would you envision that as being something that a court would ultimately do when challenged? How far do you go?

Mr Kennedy: I think the first onus would be on governments to try and define, and if they fail, then yes, the redress to the courts would be there. It is there now under the Canada assistance plan, under the international covenants. It is very inaccessible to low-income people. The first court challenge has only happened eight or nine years after the Charter of Rights and only because of a special initiative by various poverty groups around the country to try and see that it happened.

The courts are an invidious place for low-income people to participate. However, those actions are already taking place. They are seeking and trying to find things without the tools to do so. The idea would be that in an environment where the live-a-day practical powers may be changed and dispersed, that there is a standard that all governments who exercise those powers would have to meet and that test would probably arise over time. Once that law is in effect then each government or the federal government, which would be my preference, would be given the chance to define some basic standard.

I would like to touch upon my experience as a national spokesperson for the Canadian Association of Food Banks which leads me away from what I thought before, that

each jurisdiction, each community, was in a better position to define what those basic economic rights might be. I no longer think so.

If you look at the conditions that exist in Newfoundland, in some of the places in New Brunswick, this country is not going to advance or progress until there is some floor that is common in its effect, in its standard. In other words, what people are able to attain in terms of food, clothing and shelter and something minimally beyond, unless the reference point is set nationally, because the degree to which local governments and the three provinces where they control it can tyrannize people, and the effect can be so conspicuous. The difference is incredible. Therefore, at least the standard should be set and perhaps the charter, because of other changes, may be the place where it has to be done. Perhaps also that kind of program could be put into effect by the federal government.

I would like to leave off where I started, that it is a very difficult thing to do, but it is not impossible, and it is certainly not beyond the reach of this committee.

If you have not already sought the perspective of people who are living in poverty, nothing I could have said today would be of the least value if that did not occur in the course of your deliberations. If you are not including low-income people, and making a special effort to that effect, there is no point in writing a law for it because the nature of low-income people, the job of growing up on low income, is such that you are not going to attract as many people. Even the organized groups that represent low-income people, of which food banks are not one, although we include people, cannot be fully representative. There is a need to reach people who live that experience. I cannot believe that you will be otherwise adequately informed about the whole thrust of what I was talking about.

The Vice-Chair: Thank you very much, Mr Kennedy. With that the committee will be in recess until 2 pm.

The committee recessed at 1226.

AFTERNOON SITTING

The committee resumed at 1408.

The Vice-Chair: The committee will come to order. We are heading into the afternoon hearings. We will be hearing from a variety of witnesses speaking on a number of issues facing us in regard to the Constitution.

KATHERINE GRAHAM

The Vice-Chair: We have with us this afternoon Katherine Graham, who is an associate professor at the school of public administration of Carleton University. Mrs Graham will be speaking to us on aboriginal issues. Would you like to begin at this point.

Mrs Graham: Thank you very much for inviting me to speak this afternoon. I want to make a couple of things clear before I begin my formal remarks and then I plan to talk for 10 or 15 minutes. Perhaps you will have some questions or some discussion that we will want to engage in.

Perhaps the first and most important thing you should realize is that I am appearing before you, at your invitation, as an individual. I am not here to represent the school of public administration at Carleton University, Carleton University or any particular group. I guess I am here, in part, because of my experience as someone who has been active in the field of research on not only aboriginal issues but also northern issues for over 18 years. I will speak, then, as an individual who has an interest in these areas and I will speak about both areas, aboriginal issues per se and the territorial north. I will also not only address my remarks to the position I think Ontario should take in the current discussions about the Constitution, but I will focus my remarks on what I think the general provincial role and stance should be vis-à-vis aboriginal peoples and the north.

I must say that from my perspective I am very pleased to see the strides that Ontario seems to be making in recent years and in recent months vis-à-vis aboriginal people particularly. I think some of the initiatives the government has undertaken, both at the constitutional level with respect to aboriginal claims and with respect to other arrangements regarding aboriginal communities and aboriginal people, are to be lauded. However, I am sure you realize there is a variety of perspectives on aboriginal issues emanating from all 10 provinces, and indeed the two territories.

There is also a variety of perspectives, from a provincial perspective and from the federal point of view, on what should happen in the north. I think my role is best put as one of speaking generally to the issue of where I think provinces should go and where I think the federal government should go vis-à-vis aboriginal peoples and the north.

My remarks will focus on four areas. Courtesy of Mr Brown, I received the discussion questions you have put out to people who are speaking before you. There are a number of questions. I selected four that I thought were perhaps most important for me to speak to, given my background and experience. I will speak to those and you are welcome to talk to me about those. I am also quite willing to speak about any of the other issues you have before you

on aboriginal and northern issues, but I have just spoken to four in terms of my formal remarks.

The four I would like to speak to relate, first of all, to the first question on your agenda relating to aboriginal people, and that is the question of the representation of aboriginal people and territorial governments in the process of constitutional reform. Second, I would like to speak about the right to self-government, which is, I believe, the second question you have on your aboriginal and northern agenda. Then I have some modest proposals or suggestions with regard to the third and fourth questions on your agenda; namely, how should responsibility for Indian and Indian lands—by which, I believe, you mean status Indians and Indians reserves under the auspices of the Indian Act—how should they be dealt with? Finally, I would like to speak about the territories. That is the particular orbit of my concern for today. As I said, I am happy to talk further with you about these things or any other things on your plate.

First of all, with regard to the question of whether or not, or how, I guess, aboriginal people and the territorial government should be represented in the current process of constitutional reform, let me begin by setting out what I see to be a basic premise, and that is that aboriginal people and the territorial governments have a different claim to the process than other groups. I think we have all read and heard a lot about ideas of constituent assemblies involving all Canadians and so forth. Obviously, the federal government and the provincial governments are very intimately involved in the current discussions related to the Constitution, but setting aside the federal-provincial relationship and the discussions of popular assemblies, as groups or as entities, aboriginal people in Canada and the territorial governments have a unique claim to being involved in the process of constitutional reform.

I argue that in the case of aboriginal people that right, if you will—and I am using the term loosely, not in a legalistic sense—to be an integral part of the process stems from the very fact these are indigenous people in Canada. They were here certainly before my ancestors, and I suspect before any of yours. As such, it is my view that they do have a fundamental right to be involved in the discussions of our overall political arrangements, particularly those arrangements that affect them. They have a fundamental right, I believe, to be involved.

With regard to the territorial governments, I think they also have a particular right to be involved in the process other than as observers or as second thoughts, which was certainly the case during the Meech Lake round. I think there is a temptation, if you look at the various territorial acts and the historical relationship between the federal government and the two territories, to think of the government of the Yukon Territory and the government of the Northwest Territories simply as some sort of super-municipal government, maybe analogous to regional governments in Ontario. I argue that is not the case. Admittedly they do not, at the present time, have the status of provinces. However, I think their role and their

responsibilities, as they interpret them as governments, and also as the public they serve interprets them, are considerably different from the role that most of us would attribute to our municipal governments. I say this also as someone who has some experience with regard to municipal and local government in Canada. Mrs O'Neill, I believe, is aware of that.

I argue that the territorial governments are not super-municipal governments, that they indeed have a designated responsibility on behalf of their residents to represent them on the national stage. They are seen by the residents in the two territories as their analogue, if you like, to a provincial government in terms of national issues. They are increasingly dealing with the federal government on a government-to-government basis. I think this is increasingly being seen as legitimate on the part of the federal government. I argue that the territorial governments, regardless of their fiscal relationship to the federal government, have, in almost a quasi-constitutional sense, a responsibility designated to them on behalf of their residents to deal with national issues. Therefore, they should be involved integrally in the current constitutional process.

We cannot talk about the role of aboriginal people, aboriginal communities and the territorial governments in the constitutional process without acknowledging the current proposals that are extant, and that, I believe, have received some sort of warm reception on behalf of at least some aboriginal leaders, of parallel panels to the federal-provincial discussions on the Constitution. I am referring here to the ideas put forward by Mr Clark in recent weeks. I think this notion of parallel panels, as he has suggested it, specifically related to the needs and interests of aboriginal peoples, is worth while and important. I welcome the support it has received from aboriginal leaders. However, I think we must be aware that this is going to be a useful approach only up to a point and that whatever process of constitutional change we engage in we must ensure that aboriginal peoples and the territorial governments are fully engaged in that process up to the end of the deliberations. That is a concern I have about the proposal for parallel panels.

I think there must be an entrenched role for aboriginal peoples and the territorial governments in the final stage of the current discussions of constitutional reform. Otherwise, we will find ourselves once again up the creek. Without being either laudatory or critical of the stand taken by Mr Harper in the Manitoba Legislature, I think the fact that this initiative by Mr Harper was able to occur and was successful in terms of blocking the passage of the Meech Lake accord is illustrative of the fact that aboriginal people, and perhaps to a lesser extent the territorial governments, have a will and an ability to block the constitutional reform process if they are not given full partnership in that process. While I say that the notion of parallel panels may be very worth while and very constructive, I urge the committee to consider how aboriginal peoples and the territorial governments can be involved up to the very end of the constitutional discussions. That is my first point.

1420

Second, I would like to deal with the right to self-government. My view is that the right to self-government should

be entrenched in the Canadian Constitution, in the broadest sense of the word, in the context of Canada as a nation-state. We see aboriginal peoples referring to themselves as first nations. I think this is a legitimate phraseology to use. However, if we are going to conceive of Canada as a nation-state in terms of the recognition of the rights of aboriginal peoples to self-government, there has to be some context put to that right. The only context that I can see as legitimate in the context of Canada as a political entity is to entrench the right to self-government as part of the Canadian state rather than as an independent nation. Having said that, I would want to emphasize my enthusiasm for the adoption of the concept of self-government in its broadest context, without putting further strictures and definitions to the phrase in the Constitution.

I believe that by now you will be well aware of the discussions that went on in the mid-1980s, following patriation of the Constitution, in the first ministers' conferences on aboriginal issues. You will also be aware that those conferences foundered, in part, because aboriginal peoples were pressed to define what they meant by self-government. Some provinces were particularly concerned that there be some definition put to this phrase. I believe that at this point it is virtually impossible to define what we mean by self-government. The implication of this, if you accept the notion of self-government in the context of Canada as a nation state, is that self-government can evolve to meet the varying needs and interests of different aboriginal communities. I would want to stress to you that, at least from my perspective as a non-aboriginal researcher, the needs and interests of aboriginal communities are extremely varied and will change over time. That is only appropriate. That is no different from the needs and interests of other communities in Canada. We should recognize that and stop trying to force aboriginal peoples to define their end state in 1991. That is placing extremely onerous and, indeed, impossible demands on aboriginal people and their leadership to fulfil. I would argue then in terms of an inclusive phrase without definition but with an understanding that there is a will to allow the concept of self-government to evolve.

I would like to make the further point, in the context of self-government, that, understandably, the constitutional discussions are focusing on self-government. There is no question of that. But I would ask the committee to remember that, in terms of achieving self-government today, my estimate—and this is my estimate; it is not out of any sort of documentation or whatever—is that among aboriginal people in Canada today probably only one third are resident in communities that have an immediate hope of achieving any form of self-government as we now might conceive it. The reason for that is because of the appalling economic circumstances that aboriginal communities face. There are the appalling economic circumstances that communities face when they are isolated as aboriginal communities in either Ontario or other provinces or in the territories, and there are the circumstances that are faced by aboriginal peoples who live in urban areas, who may be part of a community in a social sense but may be very much part of a broader economic environment.

The evolution of self-government is not only tied to the political needs and interests of aboriginal peoples; it is also tied to the evolution of the economic circumstances of aboriginal peoples. I would suggest to you that that fact reinforces the idea that we cannot force a definition of self-government on aboriginal peoples in the Constitution beyond endorsing the concept of self-government as part of the Canadian nation state.

The third point I would like to make relates to the third and fourth questions on your agenda, and they deal with the responsibility for Indians and Indian lands: "Should responsibility for status Indians and Indian lands remain with the federal government?"

I would argue that formal responsibility for status Indians and Indian land should remain with the federal government. I am not a lawyer but I believe that there is a substantial base of legal opinion, beginning with assertions about the validity of the proclamation of 1763, to suggest that this is indeed a long-standing and a permanent responsibility of the federal crown.

I also believe that in a federal state it is important that responsibility for status Indians—and I am going to expand my comments here to include aboriginal peoples generally—should rest with the federal government in order to prevent capriciousness on the part of individual provinces.

I indicated in my preliminary remarks that I am addressing my comments not necessarily to the role that just Ontario should play in Confederation, but to the role that all provinces and, indeed, the federal government should play in Confederation with respect to aboriginal peoples in the territories.

I am sure, by virtue of your casual reading and perhaps some of your own observation and experience and discussions with colleagues, you will realize that there is a wide spectrum of opinion among Canadian provincial governments about the validity of aboriginal claims, not only to land but to other aspects of life, and also a wide range of preparedness on the part of provincial governments to engage in arrangements with aboriginal communities and organizations to provide services or to undertake initiatives.

Ontario, I would argue, is among the forefront in terms of trying to engage in those issues, but there are other provinces that are perhaps not so far advanced in their preparedness to deal with aboriginal issues.

I would argue that responsibility for status Indians, if you will, and perhaps overriding responsibility for aboriginal peoples should remain with the federal government. However, this should not be seen as preventing provincial governments from dealing with aboriginal issues and communities. I think that the example of provinces like Ontario and Alberta, which have very different histories in terms of the way they have gone about dealing with aboriginal communities and the kinds of aboriginal communities they have dealt with, is very illustrative in terms of the range of initiatives that can be undertaken by a provincial government and that can be seized by aboriginal communities as something which is worth while to the main endeavour they are about, which is improving their lot in the world.

By saying that responsibility for status Indians and Indian lands and perhaps for aboriginal people overall should

remain with the federal government I am not precluding initiatives by provincial governments. I would argue, and I have argued with a colleague in print, that high politics is not enough; that there is a need for constructive and concrete initiatives by individual provincial governments and by the territorial governments with respect to aboriginal communities and aboriginal individuals.

1430

Vesting responsibility for aboriginal peoples and aboriginal lands in the federal government is not an excuse for provincial governments to duck out, nor is it a strait-jacket for aboriginal communities and provincial governments to see themselves as confined in the kinds of relationships they have. I think that in the interests of maintaining some basic standards, some basic commitments to seeing the rights of aboriginal peoples and the improvement of the conditions of aboriginal peoples realized, there is still room for the federal government.

What should be the federal role? I would argue that the federal role falls in three areas. In one area particularly there is an interesting scope in terms of the current constitutional discussions for a joint role between the federal government and provincial governments, but let me deal with the first two first.

What should the federal role be? First of all, the federal role should be to continue to exercise the trust relationship it has with respect to status Indians and Indian lands. By saying that there is a federal responsibility to continue to exercise that relationship, I am not saying that the relationship should necessarily remain in the same paternalistic vein as it is now under the terms of the Indian Act, but I believe, and again I will reiterate that I am no lawyer, that relationship is there. The trust relationship is felt very keenly by particular Indian communities in Canada. It may not be felt so keenly by Indian communities in Ontario, although they do feel it, but if you were to travel around as a legislative committee in the prairie provinces you would certainly see Indian communities embracing that relationship very strongly. So in the interests of making proposals and suggestions in the context of all of Canada, I would suggest that there is a federal role vis-à-vis the trust relationship.

The second federal role I would set out is to fulfil traditional financial responsibilities that the federal government has vis-à-vis Indian governments. Again, I would not want to restrict the kinds of financial relationships which have characterized past practice as necessarily indicating what should occur in the future, but I believe that the federal government does have a financial responsibility vis-à-vis status Indians and that financial responsibility should be retained by the federal government. Again, this does not preclude provincial governments or the territorial governments from engaging in their own financial relationships with aboriginal communities and aboriginal peoples, but there is a basic relationship there and I think it should be retained.

The third area where I think there is some room for thought, some room for experimentation or at least for experimental thinking as one thinks about how we might change the Constitution and how we might deal with aboriginal peoples and indeed territories in the Constitution,

is in the area of oversight. What do I mean when I say "oversight" with respect to aboriginal peoples? If you look at the history, and I am sure you have, you will see that there is a history in Canada of broken promises, and these are not broken promises that just emanate from the rhetoric of particular aboriginal leaders or aboriginal communities or whatever.

There are demonstrable instances of broken promises between the federal government, between provincial governments, between even territorial governments and aboriginal peoples. It strikes me then that in the context of designing a new Constitution and of ensuring a full and satisfactory relationship between aboriginal peoples and the rest of Canada in the constitutional context, we need to define some new way of dealing with the exercise of responsibilities by the federal government, by the provincial and territorial governments and by aboriginal governments vis-à-vis each other, because I think that the relationship between all of these parties has become clouded by past practice and by new promise. So we need to have some mechanism in place to deal with oversight, or at least with the possibility of oversight: with the possibility that some government, be it the federal government, a provincial government, a territorial government or an aboriginal government, somehow does not live up to its commitments vis-à-vis the other party or other parties in the country. It is a trust relationship not just between status Indian governments, but increasingly between aboriginal governments and other governments in Canada.

As I said, I believe that trust relationship, as it is emerging, is clouded by past practice and by suspicion on the part of all of the parties involved. I suggest that, as part of the constitutional package that is put forward, the committee consider establishing some sort of independent aboriginal commission to report to Parliament, to the provincial legislatures, the territorial legislatures and aboriginal governments and indeed to the Canadian people on the disposition of Canadian governments, including aboriginal governments, on aboriginal matters.

There are limited precedents in the Canadian context. The Indian Commission of Ontario is perhaps one example. The proposal to establish a commission on native claims in British Columbia is another example. The Prime Minister's proposal to establish a commission on aboriginal claims for all of Canada is another example. But I would argue that these individual examples which have been put into existence or which are proposed are limited in their focus and that we need to take a new approach to regulating the relationship between aboriginal governments and other governments in Canada in the context of the interests of the Canadian people. I suggest this independent commission is one way that might be feasible to do this.

This would not be a court. Obviously there are still going to be matters of a criminal nature and a civil nature that affect individual aboriginal people, individual Canadians, non-aboriginal Canadians vis-à-vis aboriginal people and so on. Rather, this would be a body that would have responsibility to monitor the arrangements between aboriginal governments and other governments in Canada and to report on the disposition of those arrangements.

You will probably be aware of the reviews, for example, of the disposition of the James Bay agreement and the Quebec and Canadian governments' failure to live up to the terms of that original agreement. One hopes that kind of failure would not occur again, but one possible responsibility of this aboriginal commission would be to review similar agreements, similar arrangements between aboriginal governments and other governments in Canada, and to report on the implementation and disposition of those agreements.

The final area I would like to comment on is with regard to the territorial governments. Your ninth question is whether or not the territories should be considered as potentially becoming provinces, or should they become some sort of supermunicipal government, or what should happen to the Yukon and Northwest Territories governments. My suggestion would be to let the territorial governments evolve on their own. I have already indicated to you my view that they are more than superlocal governments. They do have, I believe, a responsibility that is given to them by their constituents, by their residents, to represent them on a national level. Regardless of their financial relationship vis-à-vis the federal government, they are not just supermunicipal governments and they will evolve into more than they currently are as time goes on.

I think it would be a mistake in terms of this committee's recommendations, or indeed the recommendations of any constitutional forum, to designate that the two territorial governments will become provinces or to designate that they will remain territories. I think the court is wide open at this point. They could remain territories, they could become provincial governments, they could become something else. Again, as is the case with aboriginal self-government, we do not want to limit the possibilities for the future. I am sure you are well aware that in the future we may in fact have more than two territories. We may find that the Northwest Territories splits. We do not want to foreclose on any options with regard to the territorial governments. I argue that the appropriate role of this committee is not to prescribe but merely to recommend that all options be kept open with regard to the evolution of the territorial governments.

1440

Those are the main areas I wanted to comment on. I would just like to offer a couple of concluding remarks.

The first, and I think most important, point is that in our enthusiasm to deal with aboriginal issues and issues with regard to the future of the two territories in Canada, we tend to gloss over differences among aboriginal peoples, between the two territories, among aboriginal communities. I think this tendency, and in fact the pressure that has been exerted on aboriginal communities, particularly in the past, to gloss over their own differences, leads to an unrealistic and unfair search for the perfect well-defined solution.

I strongly urge the committee not to do this, to leave options open. I think this is especially crucial in the area of constitutional reform. I think that if we prescribe and try and force definitions on aboriginal communities, on the territories, this will only exacerbate the tensions that already exist and exacerbate the divisions and tensions that exist among aboriginal people and the two territorial governments. This

will block the creative process I think we can engage in to bring about solutions to the problems of aboriginal communities and aboriginal peoples and the two territories that are now becoming more commonly acknowledged.

Finally, I think we must recognize the link between aboriginal rights, aboriginal self-government and economic development. These three things are inextricably and inevitably and eternally entwined. Your focus is the Constitution, you focus is on government, and perhaps rights, but I urge you to consider the issue of aboriginal rights, the right to self-government, in the context of the economic circumstances that aboriginal people and aboriginal communities now find themselves in and to think about where one wants to go and where Canada wants to go in terms of aboriginal rights, self-government and aboriginal self-sufficiency in an economic sense.

These three things are entangled in such a way that either they will be a Gordian knot that will end up choking the country as a whole or else they may become indeed a very strong rope or cable that can pull us very positively into the future, but if we ignore the relationship among these three things, we do so at our peril.

Those are my formal remarks. I welcome any questions or comments, or any questions you might have about other issues on your agenda, aboriginal or otherwise.

The Vice-Chair: I would like to thank you very much. We have gone a little bit over the 30 minutes as it is, and we have other presenters. I will allow one quick question from Mrs O'Neill and we will have to move on.

Mrs Y. O'Neill: Thank you so much for bringing such extensive expertise on an issue that I think is of interest to almost every Canadian at this moment. I am sure you have sorted out some things for the people who are watching this show today and I am sure your remarks are going to be referred to.

I have two or three things—very short, though. Could you say a little bit about what you think about what is going on in New Brunswick and Nova Scotia regarding guaranteed representation?

Mrs Graham: I am following the proposals that are extant in those two provinces. I think the idea is interesting. I am not sure it is the way to go. It may well be that having guaranteed aboriginal seats in a provincial Legislature may provide continuous access for aboriginal peoples to the Legislature, a continuous voice. Again, I would be wary, though, that including this as the cornerstone of dealing with aboriginal peoples distorts the diversity of aboriginal needs and interests even within a single province and may deflect attention from the real issues that have to be dealt with. While I see this as positive on one hand, I would caution against seeing this as the solution. It is not the solution. It may be a beginning. At its very worst, it may be tokenism. If one is a Pollyanna, as I am, one looks at it as a beginning, but it is not the end of the process.

Mrs Y. O'Neill: From what I have been able to read about it, it does look like a beginning. I am hopeful for that.

One other major event that I watched with some dismay on the weekend was Mr Clark's encounter, meeting, whatever the term is, with the Metis communities. I wondered

how that would fit in with the parallel assembly concept. I wondered what you would think that whole experience would do to the mix. The Metis seem not to feel somehow that they are part of the proposal Mr Clark has already come to. Could you tell us a little bit more about that?

Mrs Graham: The Metis in Canada represent a very particular problem. They do not have a defined land base, they do not have reserves, they do not have the territories as the Inuit and the Inuvialuit have, and so forth, so I think it is quite natural for Metis people to think of themselves as particularly disenfranchised. They do not have the rights of status Indians. They are landless, and so to define a community is very difficult for them.

I suggest, though, that Metis communities do exist. It is a question of defining them in a different way than we traditionally define communities, and the problem that Metis people are experiencing vis-à-vis the current constitutional discussions I think is symptomatic of the difficulty if you enforce the entrenchment of a particular concept of self-government in the Constitution, because my sense is—I am not the one to speak of this, but my sense, as a non-aboriginal person, is that the Metis people are evolving their sense of community and what community means to them, and how they end up vis-à-vis self-government or their own conception of a community may change from contemporary visions of Metis life and Metis community.

I cannot offer any solutions to the immediate situation of Metis people vis-à-vis the Constitution. I suggest to you that they are perhaps the most in danger of all of disenfranchisement in the current constitutional discussions, but I also suggest to you that their situation vis-à-vis the current constitutional discussions is illustrative of the problem of trying to force static definitions on aboriginal people and their communities.

The Vice-Chair: Thank you very much. Unfortunately, we have run out of time. We have other presenters. I know there were some other questions. Maybe a little later, I think Mr Malkowski will want to speak to you for a couple of seconds. On behalf of the committee, thank you very much.

1450

ONTARIO ADVISORY COUNCIL ON MULTICULTURALISM AND CITIZENSHIP

The Vice-Chair: Next we have the president of the Ontario Advisory Council on Multiculturalism and Citizenship, Hanny Hassan, and the executive director of that particular branch, Henry McErlean. Any time that you are ready, you can start.

Mr Hassan: The Ontario Advisory Council on Multiculturalism and Citizenship appreciates the opportunity of appearing before your committee to express our views on the important issues that are before us.

We appreciate that our remarks should be focused on the issues of multiculturalism and perhaps values, as was identified in the request to appear before the committee. However, we would like to point out that as an organization and in fact as representatives of multicultural communities, we are in fact concerned about all of the various issues that arise with respect to the constitutional questions.

We would like to highlight very briefly some of our positions on other questions towards the end of our talk.

I would like to tell you briefly about the advisory council. The council is an arm's-length agency of the government of Ontario, appointed by order in council and reporting to the cabinet through the Minister of Citizenship. Our membership consists of up to 60 members representative of the geographic and ethnocultural demography of the province. We are organized into regional committees to permit the council to consider issues of province-wide as well as local concern.

The mandate of the advisory council includes: responding to specific government requests for advice relating to policy formulation and program development and delivery; examining and commenting on the effectiveness of the policies, programs and service delivery mechanisms of the ministries and agencies of the government of Ontario; and assisting in promoting the concept of a multicultural Ontario as set out in the government's policy, with reference to equality, access and participation, cultural preservation and sharing.

At our spring council meeting and some of our regional committee meetings, our membership had an opportunity to review the public discussion paper, *Changing for the Better—An Invitation to Talk About a New Canada*. While members of our executive committee have reviewed the interim report of the select committee, our membership has not had an opportunity to discuss the report. We have, however, discussed the evolving nature of multiculturalism and hope to prepare a comprehensive position soon.

Today, we would like to highlight some of our positions. Obviously, in a council as diverse as ours, it is not possible to get unanimity on all issues. We do believe that the views we are presenting today, however, are representative of the sense of the council and of the constituency that we represent. We hope that in a future written submission to your committee, which will have been discussed by our membership, we will be able to amplify our comments.

The council applauds the committee's emphasis on the common values we share as Canadians, as expressed in the interim report. We do believe there should be a Canada clause touching on such issues as the two languages, Quebec's distinct role, aboriginal self-government, the diverse cultural heritage we share, and a broad general statement on equity issues that should be sufficiently broad to encompass issues of equity that, perhaps, are not envisioned in our current programs.

The interim report clearly and concisely identifies the various concerns that are present in our society about the multicultural policies of both our federal and provincial governments. The Spicer commission report also discussed the input it received on those policies.

Current media reporting on multiculturalism has, generally, portrayed it as being divisive, leading to social tensions, lack of unity and fiscal irresponsibility. However, the diversity of our population is an indisputable fact. Immigration trends are likely to increase the diversity. Given the differing needs of segments of our populations, our governments must provide for equality of access and opportunity in a proactive sense.

Multiculturalism is evolving from the initial concept of folk arts, cultural retention and sharing to one which includes an acknowledgement of the differences that exist in our society, the provision of equal access and opportunity for all citizens and, perhaps more fundamentally, cross-cultural understanding and intercultural co-operation.

We are committed as a society to fairness and equity. Identifying with one's cultural roots does not diminish one's capacity to be fully participatory in Canadian society. It may require abandoning some inherited cultural values in favour of core values that we share as Canadians; that is, there may be values that we bring with us in our transition to Canadian society that are at variance with and perhaps unacceptable in the context of Canadian society, that will have to be given up.

On the other hand, there are values that are benign and neutral with respect to how we live in this society. They may, in fact, be values that would augment and enhance our participation in Canadian society and should be retained if that is the wish and interest of the communities and the individuals involved in the transition as they move into Canada.

We believe the Charter of Rights should have primacy over all other legislation and the Constitution and that it should identify within it particular characteristics about the nature of Canada.

With respect to the division of powers, it is our view that the federal nature of our government requires it to articulate the standards across the country, recognizing the diverse capabilities of the various provinces of Canada. We believe Ontario is especially endowed and has a special responsibility for those provinces that are less able to take care of themselves. I speak primarily of the Atlantic provinces and of Saskatchewan.

The arrangement we have made in this country is very much like a family, in which we have agreed that we are going to be a sharing nation. Consequently, I believe Ontario has a major role to define in the relationship between the federal government and the provinces. How that relationship should evolve is one that, as a committee, we have not yet been able to discuss fully, but we would hope it would recognize the need for a federal government that has clearly defined responsibilities, but in areas in which service delivery is primarily a provincial responsibility, that those areas of jurisdiction would be part of the provincial mandate rather than the federal mandate.

In the area of distinct provincial rights, we are concerned that there be differential treatment of one province vis-à-vis another in terms of constitutional arrangements. We would hope that any arrangement made in the Constitution would recognize certain powers that would be shared equally among the provinces.

We believe it is important that the relationship we develop through the constitutional discussions be as open as has been displayed by this committee and the other committees that have been traversing the country. However, we also feel it is important that our legislatures take on the responsibility of making the final decisions that are the responsibility of elected representatives of the people.

It is our position that elected representatives should be entitled to have a free vote on issues that are of paramount concern to the country, that they be free from their partisan relationships to be able to make decisions and judgements that reflect the kind of feedback they receive from within their own community, so that on those questions of primary importance to the nature of our society we have the true parliamentary tradition in which parliamentarians are free and able to discuss and vote as their consciences and their own local constituencies dictate.

That pretty well summarizes in capsule form many of the issues we have already discussed. As I indicated, we would like to make a more formal submission to the committee at some future date. Our full council will be meeting later next month in Thunder Bay, and we will be having a consultation with the native community of the southern part of northern Ontario.

We hope to prepare our position on that as well as to have concluded our discussions on multiculturalism and the constitutional issues by that time. Thank you, Mr Chair.

The Vice-Chair: When your position paper is put together, would you make sure that the committee gets a copy? We have a number of questions. Mr Malkowski first and Mr Offer afterwards.

Mr Malkowski: Thank you for your presentation. It was very informative. I have a couple of specific questions for you. You mentioned the importance of the rights of equality for all the provinces, and that is true. Do you feel it is important, then, for multicultural groups to have access to the right information within their own cultural language, or have cultural interpreters when it comes to health services or education, so that they get full access to information for all the services provided by government? I would like to hear your comments on that. That is my first question.

My second question would be: When it comes to multiculturalism, what is your stance on the concept of the melting-pot approach? I understand that some groups do not feel very comfortable with that concept. Are there other options available to multicultural groups?

Mr Hassan: We believe that access is a cornerstone of service delivery within the government, whether it is the government of Ontario or the federal government. That implies, therefore, that all government agencies should be able to deliver services in an appropriate context, whether it involves providing services in the language of the recipient or providing the service in a culturally appropriate sense for the members of that community.

For instance, in the area of making provision for the care of seniors, many cultural communities feel it is more appropriate for the service to be provided in the home rather than in an institutional setting. Our programs should be sufficiently flexible to permit that sort of accommodation.

In the area of cultural interpreter services, again as an illustration, there clearly is a need in the education system for cultural interpretation as compared to translation services, inasmuch as many cultural communities do not respond to the educational system in the same way as is traditional within Ontario.

Discipline problems may often be resolved if there is an interpreter available who can translate to the system the cultural ambience of the student and his family, and also translate to the family the cultural norms, the acceptable types of behaviour within the context of Canadian society.

1500

With respect to the second question on the melting-pot concept as compared to the mosaic, certainly the idea that one should immerse oneself totally in a monolithic or unified culture is contrary even to experience in the US which is deemed to be a melting-pot society, because even within that society there are very, very vibrant ethnocultural communities. Consider the Irish community in New York, a very strong Polish-American community in Hamtramck, Michigan. And other communities have distinctly identifiable communities. So in my view, the melting pot concept for the United States is a myth. They have not acknowledged a multicultural approach within their government policies, but in fact, in many jurisdictions that is what is happening.

I believe it is interesting that the evolution of our cultural identities is one in which we may carry a diversity of cultures as individuals, whether we come from a ethnocultural community or not. In the workplace we have a workplace culture, and we behave in a certain way which is the acceptable norm within the context of that workplace.

We may have a cultural ambience within our religious community which calls on us to behave in a certain way. We may have within our ethnocultural community a cultural bias that is somewhat different from the expectation of Canadian society. Within all those cultural variants, there is a core value system that each of us has, and as long as we do not digress from that core of values, then it is all right for us to behave differently in different contexts.

I suspect that as time evolves many people within our ethnocultural communities will find their core values incorporate values from their ethnocultural traditions as well as values that they have absorbed and inherited from others around them, and at the same time they will be able to project other identities when it is appropriate.

Mr Offer: Thank you for your presentation. I have two questions. The first deals with your statement that you believe the Charter of Rights should have primacy. I am wondering if your council has taken a position as to whether in these upcoming constitutional discussions, or in terms of the advice you give to government, that the override clause contained within the charter should be done away with. That in itself takes away from the primacy of the charter. I would like your thoughts on that issue.

Mr Hassan: Our council has not specifically discussed that question. The perspective I give you is a more personal one, that if the override provision, the "notwithstanding" clause, is retained, then the equity provisions and others we seek to enforce may be whittled away by provincial governments. There would then be no recourse, as we have seen with the French-language issue in Quebec.

Consequently, my view is that certain key values have to be protected within the charter, and if it is to be a document that has primacy over the Constitution, then at least in those areas where we are talking of primary concern, the

equity issues and the other issues that deal with perhaps the crux of the questions that have had the most controversy in the recent constitutional debates, once we have reached some decisions on those, they should perhaps have some status that is superior to the Constitution and not at the liberty of the provincial governments to change.

Mr Offer: On a more general note, over the last while there has been emerging re-examination of the whole issue of multiculturalism: what it was, what it is and what it might be. I am wondering, from your position, how do you see the whole issue in a fairly general sense as to the evolution of multiculturalism?

Mr Hassan: In my view, the two cornerstones of the policy are likely to be, if I could use the jargon that I used in my talk, cross-cultural understanding and intercultural co-operation.

Perhaps I could just amplify on those two. Not only do we see conflict between ethnocultural communities and the mainstream, if you will, but there obviously is conflict among and between ethnocultural communities, conflict that has arisen primarily because of the histories of those communities and the conflict that arose in their native lands when they came here. That I think is somewhat subdued, but the tension is there. We do not see it in the kind of violence that is occurring, for instance, in Yugoslavia today, but it is a fact that there are biases and prejudices within the ethnocultural communities, just as there are in the greater part of our society.

I think that we have a responsibility for conflict resolution. We have a responsibility to ensure that one of the core values that people have as a part of their retention is that in fact those are left behind. It is all right to retain a cultural identity, but it is not all right to bring hatred and bitterness and political ideology that is alien to our society into Canada as a part of that cultural tradition. So in terms of the policy directions, I think there is some bridge-building to be done, some overt kinds of bridges to be built between communities.

I might just illustrate that with my own community. I happen to be from the Arab community. During the Gulf crisis, the Arab and Jewish communities within the city of London, in which I reside, got together and had some conciliatory dialogue. It was relatively informal. It has not continued, but the intention is that there should be some ongoing dialogue between those communities. I only use those two communities because I happen to be a part of them. There are obviously other communities that have the same sorts of tensions and they exist in solitudes between each other, and it is important that that happen.

The second aspect of it is the intercultural co-operation that I mentioned. We spoke earlier about the cultural interpreter program. It is a pilot program that the Ministry of Citizenship is currently running. I do not know whether it has now evolved into a full-fledged program, but it illustrates the kind of intercultural co-operation that can happen.

We also spoke about service delivery. Obviously the government cannot deliver all the services in all of the cultures and all of the languages. I think that is clearly understood. On the other hand, there are small communities

that have similar or common problems, and there is no reason why they could not get together and share infrastructures and share resources and deliver services. In fact, as I understand the recent ministerial announcement in the area of social service delivery, there is an intent to do some of that by the current government of Ontario.

But in fact the cultural interpreter program is one of those programs. To develop an infrastructure, deliver translation or cultural interpreter programs and certain delivery services from very small communities was hopeless for that community to provide. On the other hand, a half-dozen or 10 communities could get together where the infrastructure was developed for all the communities, a bank developed so that service providers had easy access to the service, and each individual community then would only be responsible for providing the interpreter to the bank—the name of people—and to assist in the training. Now we have a service delivery mechanism that in fact involves a basket of communities in delivering a needed service in a sensitive way. I think that particular model provides us opportunities to deliver services sensitively.

1510

The Vice-Chair: I would just like to note to the committee we have about maybe 10 minutes at the most, so if we can try to limit, as Mr Hamrick would like to get on as well.

Mr Curling: As I heard your presentation, I thought very much about, again, what is multiculturalism, and I focus on two things you have mentioned. One, you talk about the fact that as we go along the diversity will increase, and I thought that especially in Ontario, for instance, we have all ethnocultural groups represented. I do not know how much it could increase. I presume you mean by numbers.

My feeling is that when the immigration policies are being applied, we attract from just certain parts of the world. I remember someone asked me at one stage if they should change the quota system or relax it for French-speaking for Quebec in order to attract more French-speaking people in Quebec, and I said: "I don't think you should, really. What you could do is direct it to other countries, maybe specifically countries where there are French-speaking blacks: Dominica and Martinique and Guadeloupe." Therefore, when the policies have been implemented, it seemed to attract just a certain amount of people. So I would say there may be increased ethnic groups that are coming in, but I do not think it will be more diverse in any respect from other areas.

When you spoke about ethnocultural communities, it seems to me you keep on referring to them-and-us type of stuff, and if I dare say, the whites themselves are people outside of the ethnocultural community. Could you respond what it meant about the ethnocultural community and the others?

Mr Hassan: We unfortunately get caught up in the jargon. I indicated at one point in time—maybe I did not at this committee—I think it is important when we speak in terms of ethnicity that we are dealing both in terms of racial, that is, visible minority members, as well as the "mainstream." We are a nation of minorities. There is no majority community. So those who say that there should

be an assimilationist trend in fact are inviting us to join in to an assimilation of I do not know what, because there is such a great diversity.

It is very difficult to speak in terms which are not exclusive and I guess we should be more sensitive to that, and I acknowledge your comment. The intent is not to exclude but in fact to say that we are dealing not only with those who come from the very small communities overseas but in fact the francophones, the anglophones and the visible minorities. Those are the terms of the mandate of my council. It is all-encompassing.

Mr Curling: One other question to you. Earlier on Professor Morton was here and he stated that it is not the Constitution that really would create wealth or poverty but policies and economics that would create wealth in any country. I tend to agree with him.

Yesterday there was an article in the *Globe and Mail* that said 6% of the population in Ontario are blacks but that 26%—the correct statistic would be 28%—of the black community uses the child care system.

When you look at policies of government itself and where money goes, not the Constitution but where the money should go, places like the Harambee Foundation gets—I stand to be corrected—about maybe \$400,000. I just take a quick look at that, that one in four people in the child care system gets that amount of money to service that group of people. Do you really feel that a reflection of, as you said, an equal opportunity for all, even though it is stated inside the Constitution, will ever make a difference?

Mr Hassan: I believe there is an important symbolism that is attached to constitutional documents and in fact to legislative positions. I think it needs to take more than that. I think we are talking not so much about policies and programs but attitudinal change. Somehow we have to do something that will change attitudes, make people more receptive to others, and also, quite candidly, and I think you are identifying it, power-sharing, because in the end, and I alluded to this when I spoke about interprovincial sharing of wealth, if we are going to provide for some people, it may be that in the tradeoffs others will lose. It is that sort of fairness that I think we have to bring society to accept, that we have a responsibility for others who are disadvantaged at the outset and that some accommodations have to be made in the way we deliver programs and we fund programs to compensate for the initial disadvantage.

Mr Harnick: I hope you can help me answer a question that I get asked an awful lot. It is a difficult question, and it is a question where I do not intend to portray any insensitivity on behalf of any individuals, but people will say to me as a politician: "How can you politicians justify spending so much money on multicultural? How can you justify spending all of that money to make life easier for people in terms of their multicultural background instead of promoting life as a Canadian? How do you justify those expenditures that governments are making?" To me, that is the question that begs to be answered every time we get around to discussing the future of multiculturalism in this country. I have difficulty answering that question, beyond the fact that you like to say to people, and I believe it is

right, that people are entitled to maintain their identity and we should be facilitating that type of life. It is not contrary to being a good Canadian. How do you justify it? How can you give me a better, more complete answer?

Mr Hassan: I do not know what the provincial figures are on expenditures on multiculturalism, but I do know that federal expenditures are less than \$2 per capita. If you were to drop the entire federal multicultural program, it would not have any sort of impact on federal expenditures.

That is not the rationalization for multiculturalism or the expenditures. What I would like to suggest to you is that we have within our society values that we consider important. We make contributions to a whole series of programs that enhance, continue and perpetuate those values. We contribute significantly to art museums and libraries, and even in the area of sports, significantly more than we do to the multicultural program. So in the context of other expenditures that relate to the nature of our society, multiculturalism is a very small component.

But I think perhaps even more significant than that, if you hark back to the responses that I made to the earlier questions, in fact for a long time in Ontario the thrust has not been for cultural retention. The policy statements going back almost 10 years do not include significant components. The primacy has been primarily towards equity and access. That is where the multicultural funds in Ontario have been spent. It is important that that continue, because that is really the nature of our society; that is, we want everyone to have a fair chance and as long as inequities exist in our province, then we have to spend some money to change that.

1520

I also alluded to the directions multiculturalism was going in. Certainly, if we are going to continue to bring new immigrants into Canada and into Ontario—into Ontario a disproportionate share, actually—then we have to have programs in place that ensure their reception is one of harmony, at least of harmonious relationships with others as they come in, and that we not have conflictual race relations or conflictual relations among other groups within our province. That means we need to make a commitment to the reception of new immigrants and their adaptation to our province.

Finally, if we are not going to have long-term problems, our service delivery programs have to be effective, and if they are to be effective, they have to speak in the language and the culture of the recipients of those cultures.

There may be savings. I alluded to seniors' programs that could be in tune with cultural ambiances that could have significant savings for the province; that is, if you were to take a senior and have him reside at the children's wish in the children's home, the cost to the province of supporting that senior in a home would be significantly lower than the institutional costs.

Those are some of the tradeoff costs that could justify an expenditure in the multicultural area. I would hope that we have been able to convince you, in the presentation we have made today, that the real thrust is not cultural retention and that multiculturalism does not mean only cultural

retention and that the money is not going to the preservation of a dance step that is perhaps 50 years old from a culture that is evolving even in the native land.

The Vice-Chair: Do you have any closing comments at this point?

Mr Hassan: No, other than the fact that we will get a report to you through Mr Brown. We do have with us a couple of kits on the council and a booklet on citizenship in the Canadian context which I can leave with Mr Brown. That is the other part of our mandate. We view multiculturalism as being the rights side of our mandate and citizenship as being the responsibility side of our mandate.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

The Vice-Chair: Next on our agenda we have, from the Ontario Public Service Employees Union, Ms Isla Peters and Ms Beverly Dalys. Come forward, please. For the benefit of the committee members, this presentation will be about an hour, which we have allotted to this.

Ms Peters: First of all, we are very pleased to be here on behalf of OPSEU. This is Beverly Dalys. I am Isla Peters. Beverly Dalys is an education research officer with OPSEU and I am head of the education and campaigns department in OPSEU.

The work of this commission we believe to be very valuable, particularly valuable in that it allows a forum for considerable discussion and debate. We would also in opening, since we think it is so relevant, like to say congratulations to the government on its signing of an agreement between governments with the first nations. We think that is extremely significant and very exciting and extremely relevant to the Silipo commission. As OPSEU members and staff, we bring this message to the government, that we are very proud today to be Ontarians.

In terms of our response, we too, I think in common with the last presenter, have not had a tremendous amount of time to research and canvass the views of our membership in reaction to the last report of the Silipo commission. However, what we bring to you are the critical positions and principles that we hold dear in policy and in discussions with our membership. We may not have the details, particularly in terms of the framework of the charter, but as it is that is what we can do within the time frame, and I sure for your part you have your own struggles with this kind of time frame in the middle of the summer.

I would like to hand over to Beverly, who will make our presentation, and we look forward to your questions.

Ms Dalys: We were asked by the committee to specifically address the questions posed on the Charter of Rights and social and economic rights and will do so in just a minute.

A number of the other headings in your package struck us as very interesting. Certainly one of the sections this committee has addressed itself to is that dealing with aboriginal peoples in the Constitution. I am sure I am repeating what my colleague has said when I say that we emphatically support the right to self-government for first nations and that we believe this right must be clearly enshrined in the Constitution. We also believe that aboriginal

languages, heritage and culture must be recognized and protected in the Constitution.

In addition to our consideration for aboriginal peoples, this committee is looking at Canada's multicultural heritage, as well as women, disabled persons and the economy. All of these areas are of primary importance to OPSEU because they are all tied into employment equity, which is very important to us. We are very proud to be committing significant resources to implement equity, and we commend the current government of Ontario for doing the same. It is unfortunate that the employment equity initiatives that are about to be taking place in Ontario will amount only to a small battle in the larger war on discrimination. For employment equity initiatives to succeed and for this one component of discrimination to be eliminated, these principles have to be applied universally and proactively.

The question of how to universally and proactively apply and enforce any rights is problematic. I am sure a lot of us remember a few years back when the federally regulated industries were asked to report on how they were doing and the results were really disappointing. Women, disabled people and minorities were not being hired to any great extent in upper level positions at the CBC or in financial or transportation industries, or anywhere else in that jurisdiction.

The Ontario Human Rights Commission is another example of an area that has failed to deliver on its agenda. There is currently a backlog of human rights cases that are nowhere near being heard. There are also a lot of potential human rights cases that are never brought to the attention of the commission, either because the persons who are being discriminated against are unaware of what the Ontario Human Rights Commission should be able to do for them, or because like workers who do not organize because they are afraid they will be fired and there will be no recourse, they are afraid they will have no protection under the system.

These are only two examples that indicate the weaknesses of general and complaint-based mechanisms which are brought in to deal with discrimination and to fight it.

One issue that the select committee on Ontario in Confederation has to deal with, then, is how the charter is going to address equality rights for those who need them most and are least able to pursue them. Perhaps a Canada clause, which defines Canada as a nation in which institutions, public and private, actively pursue goals in harmony with the principles of employment equity, would achieve the desired result. Maybe it would not. Maybe to overhaul subsection 15(2) of the charter would do it, so that instead of allowing employment equity initiatives, you actually require them.

OPSEU cannot come before this committee today with a list of changes to the charter that would guarantee members of visible minorities protection from racism, or that would guarantee women protection from poverty. We cannot even come here convinced that a rewritten charter would be effective in helping us to realize any of these goals. We certainly cannot come here today to give specific advice as to why any particular section, instead of the preamble or instead of another particular section, should be rewritten or how it should be rewritten. All we can do is

discuss our view of equality and what kinds of protections Canadians ought to be able to expect.

1530

Above all else, I think Canadians should be able to expect that they will not be abandoned by the public institutions they have come to rely upon. Canadians are justifiably proud of their distinct accomplishments in the area of social and public programs. Canada was built on public services. Consider, for example, the building of the CNR.

Public services remain the lifeblood of Canada. Perhaps our system of universal national health care stands out as the most cherished program to which all Canadians have access. Similarly for Canadians post-secondary education is an option for more than just the well-to-do. There are other examples. There is public broadcasting, unemployment insurance, public transportation networks and so on. They all contribute to the distinct nature of Canada.

The public services that Canadians grew up with or struggled for are services which define Canada's responsible, caring nature and are services to which Canadians have absolute rights. These rights, however, are currently being eroded by federal programming cutbacks coming out of Ottawa. Universal health care, which is Canada's flagship program, is being dismantled as the result of Bill C-69. The federal government will now be providing less funding and eventually no funding at all for health care. Consequently the federal government will not be in any position to regulate and ensure that a set standard level for health care is available in all provinces.

Another similar example is the recent changes to the Unemployment Insurance Act. Here again the government has been removing itself from the costs of unemployment insurance and has been passing it on to employees. It now takes longer to qualify for UI. The most frightening thing in all of this is there is no definitive guarantee that UIC will not be dismantled entirely.

How can Canadians have enshrined rights to public services, to the safety nets to which they are accustomed? Could it be accomplished with a Canada clause in the charter or elsewhere in the Constitution? If such a clause were to define Canada as a nation in which, among other things, every citizen is entitled to free quality medical care regardless of geography or income, or to sufficient social assistance during periods of unemployment, would these rights be protected? Would such a clause force the federal government to continue direct federal funding of health care and to reconstruct UIC as we knew it not so long ago?

We do not know the answer to this. We do know that if the answer is yes, then clearly we need such a clause. We also know that we see public services as the lifeblood of Canada and if the Canada clause is drafted, it must incorporate a strong statement about the rights Canadians have to public services. A Canada clause would also have to recognize Canada as a nation whose heritage is based on three distinct cultures, each of which is guaranteed its own needed protections.

You posed a question about whether Parliament and legislatures should have the power to override rights and freedoms guaranteed in the Charter of Rights. This is a difficult question to answer, because among other things

we cannot foresee every situation where the override might be applied. This is a question that would probably be determined by the courts if it came up a lot, but in this context court decisions would have to reflect the spirit of the charter. The charter would as a result have to recognize the special status, needs and autonomy of the two founding cultures of Canada that have been the most overlooked, and I mean of course aboriginal peoples and the Québécois.

The charter would also have to strictly define and defend Canada as a nation with a responsibility to its citizens for truly equal opportunities in education and employment, and for further responsibilities to uphold basic standards in social and economic welfare for all Canadians.

The sceptical tone of this report is based on OPSEU's concerns about how effective the charter could be in turning, or even stemming the current tide towards the elimination of public services. The erosion is taking place before our eyes in a lot of ways. The federal government backs away from its responsibilities but passes them on to the provinces. The provinces pass their responsibilities on to the municipalities or on to transfer agencies. At the last step, cost-cutting measures like privatization or service cuts are brought in. Suddenly, Canadians find that the services upon which they have relied are watered down and there are difficulties in finding a level of government or anyone who will take responsibility.

Our other source of doubt comes when we consider who the charter really protects and even who a new and improved charter would protect. The Charter of Rights is essentially a document concerned with the protection of individual rights. As a union committed to the principles of democracy, we find this alarming.

We talked earlier about individuals who are afraid to organize unions or who do not know they can go through the Human Rights Commission when they have a problem. These are the same people who would not necessarily have recourse through the charter. They would not know how to, or they might not have the resources to start off the complaint. They would not necessarily have the wherewithal. If the charter is truly to defend the rights of these citizens, it has to begin by setting up, recognizing and enshrining the basic services to which all Canadians are entitled and by determining and enforcing the basic programs and initiatives that are required as a foundation for true equality in Canada.

We thank you and welcome any questions you might have.

Mr Offer: I have listened closely to your presentation. Just to begin, what you have spoken about that should be contained in the charter, without getting into the basic rights, is that trying to provide what is really the responsibility of provincial governments, in fact sometimes municipal governments, regional governments or indeed the federal government—in your last sentence I think you said there must be these types of programs found in the charter. I am wondering whether that might be argued as going beyond what a charter should contain or have as its objective. There is the obligation and the responsibility of other governments to set priorities and what they wish to do. The rights are found within the charter. Maybe the programs and

services should not be, but should be left to local forms of government.

Ms Dalys: Obviously, in essence, all our members provide public service of one sort or another in Ontario. When we think about Ontario and when we think about Canada, what we are thinking about is a quality of service and a quality of life we all depend on. If we are to talk about a Canada clause and the kinds of rights and the kind of quality of life we expect for Canadians across the country, whatever nation or group they come from, what they can expect, we want to see how those are guaranteed.

Right now we would say they are not guaranteed. In fact, they are on their way down the drain in terms of the trends of what we call increasing provincialization. That is the federal government getting out of the responsibility of governing and handing it over to the provinces, many of which simply cannot bear the brunt of that kind of financial load of service and who in turn are handing it over to municipalities who in turn are privatizing. That is not our idea of Canada.

At the moment we do not see the guarantees offered by giving those responsibilities to different levels of government. What we see is the spectre of New York City. New York City is going bankrupt and is privatizing like crazy. Toronto is in trouble. Perhaps down the road we are a New York City. The Maritimes are in very poor shape. The poverty is appalling. It is not what we expect in terms of Canada, the kinds of services and the kind of life we want.

Mr Offer: We have heard submissions that have spoken to the possibility of more powers being given to the province from the federal government, a devolution of powers from the federal government to the provincial government, not necessarily that each province receives the same powers. It will be potentially up to them, in terms of their negotiations, what they feel they are best able to be responsible for. Is it the position of OPSEU that you are, first, in favour of a strong central government; and second, against a devolution of powers from the federal to the provincial governments?

Ms Peters: We believe strongly that there has to be a form of centralized government that offers the guarantee of the public service network. However it devolves, the responsibility for the guarantees has to be central. The devolution we already see, we anticipate it and we see that it does not work.

1540

Mr Offer: So you have a concern, as more powers go from the federal to the provincial governments and as less funding moves from the federal to the provincial sphere, and you see this as a problem in terms of the service across the country that may be provided.

Ms Peters: Yes.

Ms Dalys: I think I made the point in the brief that as the federal government gets out of funding health care, it can no longer say: "Okay, here are your funds. This is a basic level of health care that is expected in Canada." If they pull out of funding it, then they can no longer set minimum standards. You end up with a fragmented health care system which is poor in poor areas. That is not Canada.

Mr Offer: The alternative is that you are calling on more funding so that it would legitimize the setting of standards across the country.

Ms Dalys: We are certainly calling for a reversal of the trend away from it. There is definitely a trend away from funding, which is not good, so yes.

Mr Drainville: Thank you very much for your presentation today. There are a couple of issues you did not touch on but which I am interested in. As we all know, OPSEU is a very significant union in the province. Because of that you probably do have some sense of the future of Canada vis-à-vis our relationship with Quebec. I was just wondering whether you might elaborate a little in terms of the position of OPSEU on relations with Quebec, questions about bilingualism and how that is viewed in terms of any policy OPSEU has.

Ms Peters: In our membership we have had a fuller discussion of the rights of first nations, and even that discussion, to be absolutely frank, is only just beginning.

In terms of Quebec, we have not had a full discussion, although we would say we agree with Quebec's right to self-determination. Going beyond that, in terms of representation of our membership, we would be predicting what they may say. But as we said today, we certainly can go so far as to recognize the rights of different cultures and the right of Quebec to have its own culture, have that protected and in fact have it flourish, and have Quebec have its right to self-determination. I know for you that is not going too far.

Mr Drainville: That is fine. I understand. I would not want you to say anything more than you felt comfortable with, representing OPSEU. Also, the issue about bilingualism is perhaps an issue you have had to deal with as a union in the province of Ontario. Is there a position right now?

Ms Peters: Our position around service, bilingual service and access to public service in Ontario is very definitely that the public should have access to the service in a language that is meaningful and reflective of the community. I think our problems around that issue would be in terms of implementation and government policy and we would say the same thing about employment equity. Historically, policies have been implemented rather brutally in some ways. They have pitted our members against the community and the interests of minority groups. We have raised that with the government and have had very productive discussions, in terms of employment equity, with this new government around the interests of minority groups, in terms of employment equity and in terms of the rights of aboriginal people of access to public services, access to jobs within the public service and of course access to the jobs themselves as self-government unfolds.

For us those are very difficult questions in our membership, but that is what we are committed to. Our experience so far is that when we start off, none of us are ever quite sure that education will work. In fact, we have found just recently that education does work. When our members understand the politics and history of different groups and different peoples in this country, then it is very easy to sort out conflict where conflicts have been set up historically in

the workplace. We have been very pleased with our success in that regard.

Mr Curling: Thank you very much. As you spoke, many things came to mind. I will touch on one first. You spoke about the unemployment insurance reduction. The program that was brought into place by the Conservative government is looking at expansion and at more money going towards training. The federal government felt that if it shifted its policy from the present UI time frame to a reduced period of training, it would change the focus and it would be more productive in that sense.

We did not see that, as a matter of fact. What we have seen is that it not only reduced, but also that training money did not go into place. How would you see, in the Constitution, holding the federal government to its responsibility in that way? This is something I am wrestling with. You are moving now from policy to constitutional statements within the Constitution.

Ms Peters: That is a question we are wrestling with too. I guess, when we go beyond the principles to how we would get the Constitution or the charter to work, we have not had enough chance to discuss that in any form or way with our membership.

Our experience that the charter itself works is not good. We have been on the receiving end of it. It is not something that in our experience puts into place proactive obligations or responsibilities on people. We are not convinced that a piece of legislation will oblige a government like the Mulroney government, for example, to reverse the trends we see. The training situation is one we are struggling with right now as well. We see the assignment of UI moneys and dismantling the UI system. The Maritimes are already suffering from that policy.

To be perfectly frank, we do not have an answer for you. If you can say that changing the Constitution can oblige a federal government not to go down the road of dismantling essential services, then I do not know that we would believe you, but we would certainly watch.

1550

Mr Curling: You also mentioned in your presentation about employment equity. Usually I am not one of those who are really excited about all these fancy political statements about pay equity, employment equity, affirmative action. I think, sooner or later, we come up with another word, another nice cliché, and then we find ourselves trying to define that. I remember the time wrestling about equal pay for work of equal value. By the time we said that, we were shaking our heads and saying, "What does that really mean?"

Ms Peters: We still shake our heads, I think.

Mr Curling: Yes, and that raised expectations or the hope of those who are being excluded out of the process itself. You said that you do believe in education and it does work. I also believe that it works. How long does it take to convince people that access to employment, regardless of class, culture, race, is important to the individual, and how long do we wait for that person to be educated? While I am saying to you that I do believe in education, do you believe in a quota system, then, that should be there?

Ms Peters: In terms of education, I spoke about education simply because we have just gone through a process of education on native rights, and it was actually funded by the Ontario Native Affairs Secretariat. The education was for our local leadership. I would say that in the absence of any proactive legislation, we have to have a political will, we have to have legislation, we have to have change.

Sometimes there are many people who do not understand the need for change, and I think education is good for that reason. I would never say that education will solve all the problems and I would not want anyone to misunderstand me. I think education is a great complement to legislative change, and I also think education is a great way of people coming to terms with their rights and the limitations on their rights.

In terms of employment equity and quota systems, we believe strongly that, whereas we have strong public service, or we have had strong public service systems across this country, access to any services, access to jobs, access to any number of services is not equal, and there are groups who have been strongly disadvantaged in our society, and that extends beyond Ontario.

People can be put right. They can get the access they should. Education is not the answer. The answer is accelerated goals and timetables. There is a difference between goals and timetables and quotas. We believe that we have to put obligations on employers in this province to start hiring properly and fairly, just as we felt in pay equity that we had to put obligations on employers to pay fairly and properly.

We felt there had to be proactive legislation—and that was the debate, I think, in pay equity, that we did not want a complaint system where individuals get to complain, much like the Ontario Human Rights Commission where you get to put in a complaint on an individual basis—that put fair and square obligations on the shoulders of employers, on the shoulders of government and on the shoulders of unions to negotiate a better deal for groups who have been disadvantaged in the past and to put things right. That is our position on employment equity, that was our position on pay equity and that would be our concern about the limitations of the charter as well.

Mrs Marland: I am sorry I missed your actual presentation. I was in at another committee but I came back in time to hear you using "privatization and the problems in New York" as an example. I wondered if you would like to elaborate more than that. I could not understand the relativity of what you were saying.

Ms Peters: We are concerned about a trend that we see happening in Canada and in fact, that has been happening internationally, which is that governments tend to be getting out of the business of governing. They are moving money into the private sector.

One way in which we see this happening, particularly with the Mulroney government, is that there is a devolving of government responsibility to the next level down. At the federal level it is called "provincialization." So the province then turns around and says, "We can't afford to carry this alone." That is happening very clearly in the Maritimes, which simply do not have the resources to carry the

kind of services that perhaps Ontario could get by on. At a lower level—

Mrs Marland: What is an example?

Ms Peters: The unemployment insurance system is one example; the health care system is another example. These systems in fact are disintegrating.

Mrs Marland: Could you give me a specific example?

Ms Peters: Bill C-69.

Mrs Marland: What does it do? What exactly is happening?

Ms Peters: What it does is devolve responsibility for services on to the next lower level of government. In Ontario what we see at the provincial level, and we have seen this for the last 10 years, is the integration of family benefits at the municipal level. So the whole welfare system is being shifted down to the municipal level. At the municipal level, of course, the municipal governments are unable to cope with strained resources. That is why we quoted New York City, which is now facing the prospect of privatizing an awful lot of what we would call critical public services because it is simply unable, at that level of government, to carry the load.

Mrs Marland: Are you suggesting that if it is less expensive for the public purse at any level of government, whether it is federal or provincial, if it is less expensive on the public purse for some other organization to provide those services, in spite of it being less expensive governments should continue to provide services even though it costs more for government to do it?

Ms Peters: We represent members both in the public service and in transfer payment agencies across Ontario. We do not find that in fact it is less expensive. What we find is jobs with cut-rate pay, so we certainly find workers who are doing the same job as those in the public service being paid far less. Those workers for the most part are women, and what we see in terms of this kind of funding is a systemic discrimination operating that you get a cheaper labour out there on the backs of women and increasingly on the backs of minorities.

Mrs Marland: I will give you an example that I would like you to comment on.

Ms Peters: If we can.

Mrs Marland: The provision of child care services, which you would be very well aware of. An earlier speaker today was talking about that being a national issue, which indeed it is. It is a national issue. If you have a government that subsidized the workers in public day care agencies and, therefore, pays them a going rate for their work, then you immediately put the private sector people into tremendous difficulty because they cannot compete because they do not have the government subsidization.

In other words, do you agree with government subsidizing one sector of a public service and not another? If you are asking for this to be a consideration when we are discussing Confederation—and it was you who brought in the example of privatization—then I think you have got to be able to say on the one hand, yes, you want workers to be paid more. But

are you saying that those workers who are paid more are only workers who are employed by government?

1600

Ms Peters: Of course we want workers paid, because they are our community as well, and we want people paid fairly and we do not want it discriminatory. On the other hand, we do not see it as an effective way of delivering public services, whether it is child care or counselling services, whatever, education, social services, the full gamut of those sorts of services. We do not see it as effective to put the responsibility for those services in the hands of private operators, commercial groups, corporations. We simply do not see it as appropriate or efficient.

The Vice-Chair: At this—

Mrs Marland: I just want the equal time my colleagues had.

The Vice-Chair: One very last point, please, Mrs Marland.

Mr Curling: Oh, you are good at this, Margaret.

The Vice-Chair: It is that the Chair is very lenient.

Mrs Marland: You gave an example in the health care field. The other lady said we would end up with inequities in the health care field across Canada, and you said in poor areas they might not have access to the same kind of medical services.

Is that not now the case? Is that not why so many people from across Canada come to a province like Ontario to live, because of the health care service that exists, but also who come on a transient basis for certain medical procedures, operations and so forth?

Ms Peters: As well as jobs.

Mrs Marland: Sure. But how are you suggesting in your presentation that you can unify the access to health care across the provinces through a federal intervention when health care services, by their very nature, in order for them to be economically affordable are reliant on density of populations? We cannot have highly sophisticated hospitals in every corner of this country.

Ms Peters: No, that would not be appropriate, and I do not know that communities ask for highly sophisticated, large hospitals on every corner of every street, or I would certainly hope they do not.

There are a variety of health care services. You raised the issue of density of population and urban versus rural. Possibly it amounts to the same thing, but in our remarks we are looking at the rich and poor provinces, how we have to get beyond having rich provinces that people come to, people who cannot live in their own provinces. We agree with you. We cannot have that sort of situation. The answer is not to turn them away. The answer is to look at how to develop the poorer provinces.

Mrs Marland: But how do you provide services in—

The Vice-Chair: Mrs Marland, I want to point out that we have representatives waiting outside.

Mrs Marland: I know, but this is my last question.

The Vice-Chair: That was two questions ago.

Mrs Marland: How do you provide services in a province like Manitoba with one million people versus a province like Ontario with 10 million people?

Ms Peters: There has to be a way of equalizing. Perhaps the issue is not equalizing; the issue is righting the situation so that the resources can go to Manitoba that Manitoba would need in order to have the level of health care service we have in Ontario, for example.

Mrs Marland: Thank you.

The Vice-Chair: Thank you very much for your cooperation. I thought we were in the Legislature today.

Mrs Marland: The next time I am going to get to speak first.

The Vice-Chair: You have the opportunity to wrap up with a quick closing statement at this point.

Ms Peters: I think we have made our points. We do have a copy of our comments.

The Vice-Chair: We would ask you to give that to the clerk on the way out.

Ms Peters: Thank you for your time.

The Vice-Chair: We thank you very much.

That brings to a close the open or camera part of our presentations. We have one other presentation, which the presenter has asked to do in camera, wanting to present just to the committee itself, so we will adjourn from TV—

Mrs Marland: Just before we adjourn, I know I am a substitute on this committee today, but as a substitute I am a legal member. Why is the next person being heard in camera?

The Vice-Chair: It was the wish of the presenter to present to the committee in camera.

Mrs Marland: I see. Have you had other witnesses before the committee in camera?

The Vice-Chair: This is the first time, if my memory serves.

Mrs Y. O'Neill: I think there will be an explanation given by the presenter.

The Vice-Chair: So people are clear, what happened is that one of the presenters who was contacted to present wished to do the presentation to the committee alone, off-camera. We respect that wish and decided as a committee that we would do so to accommodate them.

Mrs Marland: So there will be no record on Hansard, or just no TV?

The Vice-Chair: No Hansard either. It is in camera.

Mrs Marland: It is very unusual for a standing committee to do this. I just want to put that on the record.

The Vice-Chair: It was a decision of the committee, and the committee made the decision among all three parties that it was the way we were going to go. As you were not here, that is obviously why you are asking those questions. With that, we will be moving into closed session. We will be coming back on air tomorrow morning at 10 o'clock.

The committee continued in camera at 1607.

CONTENTS

Wednesday 7 August 1991

Desmond Morton	C-1259
Daily Bread Food Bank	C-1263
Katherine Graham	C-1270
Ontario Advisory Council on Multiculturalism and Citizenship	C-1274
Ontario Public Service Employees Union	C-1279
Continued in camera	C-1284

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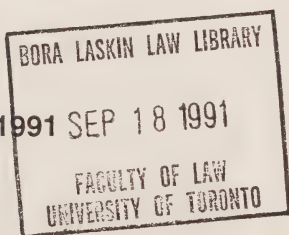
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Première session, 35^e législature

Official Report of Debates (Hansard)

Thursday 8 August 1991



Select committee on Ontario in Confederation

Journal des débats (Hansard)

Le jeudi 8 août 1991

Comité spécial sur le rôle de l'Ontario au sein de la Confédération

Chair: Tony Silipo
Clerk: Harold Brown

Président : Tony Silipo
Greffier : Harold Brown

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Table of Contents

Table of Contents for proceedings reported in this issue appears at the back, together with a list of committee members and other members taking part.

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Table des matières

La table des matières des séances rapportées dans ce numéro se trouve à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et des autres députés ayant participé.

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

Thursday 8 August 1991

The committee met at 1009 in room 151.

The Vice-Chair: The committee will come to order. We find ourselves today in the last day of this week's hearing with regard to the work that the select committee on Ontario in Confederation is doing.

ROBERTA L. JAMIESON

The Vice-Chair: We have with us this morning Roberta Jamieson, who is the Ombudsman and has been there for a little while. She is going to present to us this morning with regard to some matters having to do with the Constitution. I am not exactly sure what topics you are going to speak on, so if you can, let the committee know ahead of time. We turn it over to you.

Ms Jamieson: Good morning. Bonjour. Sago, in my language. I am delighted to be here. I want to thank you very much for the invitation to appear before you and for your generosity in thinking that I might be of some assistance in your deliberations.

I found myself seeking to balance on a tightrope preparing to come here today, for the mandate which you, the Legislature, have given me requires me to maintain a certain neutrality. At the same time, I have had experiences leading to a perspective I believe could be useful to you and which I would like to share.

I believe we are of one mind in our desire to improve the quality of democracy enjoyed by the people of Ontario as part of a productive Canadian union. Our struggle to reach this objective is tempered by the fact that we have both the privilege and the burden of living in times when we are required not only to confront monumental challenges individually and collectively, but to deal with the reality that other challenges gnaw from within at our consciences and trouble our souls.

There are those who are convinced that all will be well in the land if the Constitution of Canada is changed. I sense from the list of questions the hope that if we could just plug in the right answers, Canada would be whole and happy, that all we require is some fine-tuning of the status quo. To adopt this view, however, requires us to ignore the tremendous stresses and changes in our generation, which continue to reshape our social, cultural, economic and political landscape.

Circumstances demand that Canada consider basic changes in the way it conceives of itself. Modern communication has transported us unwillingly from simpler, more tranquil places of the mind to a global village in which we are ill prepared to live. New perceptions and definition of rights, a breakdown in traditional structures, a failure of institutions to meet their *raison d'être*, the realization that many of our institutions do not reflect the face of Canada, increased mobility and immigration, these have all resulted in dynamic tensions which require our attention.

There is another reason why I find it difficult to respond to the list of questions supplied by the committee, for to deal with the details without having shaped the vision will leave us where we are now, faced with ironclad parameters which do not leave us much room to adjust and evolve and mature. It would be pre-emptory, even exclusionary, to deal with detailed questions until we have a shared national vision for the future which dynamically opens up space as space is needed in the years to come, space for all Canadians individually and in collectives to achieve their personal hopes and dreams.

I firmly believe that such questions can only be answered after we have established a framework for the future which is able to accommodate fundamental changes, which we might now be able to anticipate only vaguely, if at all. Only if we have an expanding, flexible framework can we escape from the current purgatory of nation-building through crisis management. True, a revised Constitution would provide a new basis for legal challenges to the existing order, but as anyone involved with aboriginal rights will tell you, mention in the Constitution is just a starting point in a long, winding trail of struggle for recognition of rights.

This kind of change might be all that can be hoped for at this time, but how much nicer it would be if Canada were able to adopt a Constitution which represented broad consensus on the principles, values, relationships and institutions which Canadians of today wish to have as the foundation for their governments and laws. Certainly imposed solutions cannot be expected to result in harmony and co-operation.

Unfortunately, we have some built-in obstacles which mitigate against Canada achieving consensus. One obstacle is the failure of Canada to face up to a transition dictated by current reality, the transition of a country which for decades considered itself, as a God-given kingdom, to be peopled from sea to sea by one people, one race, one culture and one religion, to a nation which is multicultural, multilingual, multiracial and with a population holding to a multiplicity of religious practices.

Another obstacle which mitigates against consensus is the general absence of predisposing attitudes to arrive at decisions by consensus-building and by achieving accommodation. We still tend to give in to an institutional urge to fight for victory rather than to achieve reconciliation.

It is easy to see, then, in today's overwhelming and critical circumstances, in the vacuum cut somewhere between fiction and fact, that so many people are resorting to other harder attitudes which make them feel more comfortable and secure, but which result all too often in polarization and conflict and push those in less comfortable circumstances to further extremes.

Most debates about the Constitution to date have been characterized by advocacy of special interests. There has been little room offered for compromise, little comfort for

those who have conflicting special interests which are held equally dear. There are undoubtedly many reasons why Canadians, whose history is filled with necessary compromise, seem to have become arbitrary and unilateral in their points of view. It seems to be the last stand of the mainstream, an effort to sustain a dream, a fantasy of a British North America which has been overtaken by new realities and new values.

I believe we have arrived at this political high noon because those who think of themselves as mainstream Canadians are unsure of the cultural platform on which their lives are based. As a result, Canada has been unable to receive full benefit of the potential offered by the others, by women, by those who speak another language, by aboriginal peoples, by non-European immigrants and by those who have achieved economic success. How can we embrace the wisdom and gifts of other cultures if we are jealously protecting our privileges and our myths of superiority from examination under the sun's light?

Can we experience the synergy which can come from those who are different if we are not receptive to living in a multidimensional world? Can we benefit from the rich perspectives developed over the ages by peoples with different experiences if these are suppressed in favour of an established order of one-dimensional thought? Those who feel threatened by the realities of the very world in which they live and by the thought that their power is slipping away seem to anchor themselves with polarities which accept no compromise. Everything is good or bad, black or white and reduced to the bottom line of the ledger. "My way" becomes the right way and the only way for those who exercise power.

Consensual decision-making and compromise are lost in a blast of might makes right. Perversely, invisible inherited and invented prejudices lead to prisons of conformity and punishment even for those who do not live within their walls. The truth is of course that no one people has a monopoly on the right answer. No one owns the road map showing the correct route to the future.

1020

There is one simple answer: We must overcome narrow automatic reflex responses so that social synergy can do its work in Canada.

We have to do it personally and nationally, for if we cannot open ourselves up to new possibilities, new perspectives, new configurations, new sharing of power, we cannot expect to survive. We will have little to offer to others and we will be unable to receive from others among us the gifts they have to offer us.

We have in this country a significant and culturally rich aboriginal population who, despite all common sense and logic, are not considered among the country's founding peoples nor are welcomed as part of the body politic. We have a vibrant network of multicultural communities with roots all over the world and yet we seem to be mired in sterile debate about the respective founding rights of two diminishing groups.

It is my hope that your recommendations will be forged to include the catalytic solvent which will unstuck

Canadians from the glue of narrow vested interests and one-dimensional mindsets.

With the help of many, I believe we can demonstrate convincingly that the accommodation of others should not be a strategy designed to coddle people of non-dominant cultures as though they had some kind of temporary affliction, or to make them comfortable until they can be absorbed into a dominant and domineering anticulture.

Certainly we can reject any approach to multiculturalism which treats the culture of others as the product of a quaint past which can be frozen in time and set out on exhibition for the entertainment of others.

Another matter: Could we not have a Constitution which would encourage all residents of this land to give their first allegiance and love to the part of Canada which sustains their lives? This is what the first nations have always been instructed to do.

The failure of Canadians to put their roots in deep in their "home and native land" has left tragic consequences all around us, for still today, some 500 years and 25 generations after the fact, we continue to find the continent governed by displaced Europeans solidly tied to European culture and language, people who remain European to their core, destined to man a hostile and forlorn colonial outpost for a mother country which has long since faded away.

It seems to me that when the settlers finally feel secure and unthreatened by people different than themselves they will no longer find it necessary to circle the wagons around their own cultures and they will open up space for others so that social synergy can happen.

When we understand our lives are sustained by the gifts of the natural world in a part of Canada and not by strings to Europe, we will not be fouling our nests and then distancing ourselves from responsibility by calling our own carelessness "environmental problems."

We will not feel the need to insist that everyone behave as we do and in fact we would respect and appreciate those who could contribute their diverse talents and points of view. We would understand why a former ambassador to Canada from Mexico would say that Canada was the solution looking for a problem. We would realize why international polls record Canada as the nation of choice.

Only a visionary Constitution can offer the scope to include these essential elements, and if the vision is to be achieved, all Canadians must be confident that the Constitution and the instruments which give effect to its meaning reflect Canada in all its dimensions. There must be confidence that there is space, sensitivity and acceptance in our Constitution for everyone: the disabled community, the original peoples, long-time and new Canadians, men and women, young and old. The Constitution is not a document which belongs to the privileged; it belongs equally to single parents, pensioners, the unemployed, those who receive social assistance.

The demand for greater involvement which seems to swell across this land and Canada's willingness to accommodate it in the creation of the country's most fundamental document is surely the essence of democracy. I cannot think of a more healthy, positive or natural development. For Canada's shape, present and future, is after all the

responsibility of all Canadians. This responsibility is the heart and soul of what it means for us to accept our ultimate responsibility as custodians of our children's future in this land. Now this realization may be difficult for those who have become comfortable making decisions on behalf of everyone else, but successful and graceful accommodation requires that we be able to reach decisions without resorting to unilateral exercise of power.

We have traditionally employed a variety of ways to arrive at solutions through accommodation. Those techniques range from town hall meetings to the use of neutral facilitators mandated to come up with a range of options which might be mutually acceptable. The essence of those old traditional approaches has relevance today as we recognize both at home and abroad that reliance solely on adversarial law and politics is counterproductive to our own wellbeing. We are starting to recognize that the global village is too small and we people are too interdependent to retain any fantasy that a solution which produces a winner and a loser will remain in place very long. We know that our very survival rests on our ability to find win-win solutions at every opportunity.

Without political will, of course, and the willingness to take political risks, none of this is possible. And regardless of all wise recommendations which might be implemented, the debate and the court cases will drag on. But we are capable of creating a new Canada which is not composed of a majority and minorities, of a "we" separated from "the others", a country in which each person would be perceived as part of a greater whole which is capable of appreciating and respecting difference.

Perhaps in colonial days in slower-moving times it was not possible for either Westminster or Canadians to think of any alternative other than freezing Canada in 19th century British tradition. None the less we can learn from that error and ensure that we create space this time around, not limit it.

Part of your task, our task, is to develop persuasive arguments why neither maintaining the status quo, nor simply fine-tuning it, is in our best interests. With broad support from every sector, perhaps government will be able to find the necessary resolve to do what must be done so Canada can be at peace with itself, so that we can open up space for all peoples so that they can participate in and contribute to Canadian life, space so everyone can exercise their just rights and realize their full potential.

I hope you will be able to recommend this kind of living process which allows for broad participation and the development of consensus and mutual accommodation. Canada cannot afford to do anything less. We cannot keep outmoded one-dimensional views and instruments which do not serve us well as we try and deal with the 21st century and beyond.

I have no doubt that Canadians, that Canada, can meet this challenge. Indeed I believe that Canada can and will lead the world as a model nation, showing the way to tomorrow's children and tomorrow's nations.

I am sorry for those of you I may have disappointed, who expected me to offer specific recommendations 1, 2 and 3. I have instead offered a template of principles and shared a

vision of what might be and I hope it will serve you well as you deal with specific questions.

As I said earlier, we cannot expect a Constitution to be the magic potion which creates from pen and paper that which can only be created by daily goodwill and highly principled human relations.

I would like to leave you with this thought: It has been said that a nation's greatness can be measured by how it treats those who are a minority in its midst. It is equally true that the test of a nation's Constitution rests in its ability to reflect all dimensions and the full range of diversity of its people. Creating the Canada which our best thoughts can envision remains something which each of us must make our constant unflinching endeavour, and may you find strength and clear vision in your deliberations to accomplish just this.

1030

Mr Curling: I was extremely impressed. I have just joined this committee not too long ago and I would confidently say it is one of the best presentations I have heard. It talks about the kind of Canada that I myself want to live in, and many of our people, and when I say our people I mean all people, want to live in, the ideal thing. At times we see flashes of it when we go abroad, when you say, "I am from Canada," and the confidence and the smile on their faces and the comfort in the people's faces tell you that you are from a very special place.

I know we are struggling now to write this perfect document called the Constitution. I think, as I hear you say these things that there may never be a perfect document because we are talking about people. There is the realization Canada has to come home to, that there are people in Halifax who cannot go into a bar because they are black or people in Montreal who are harassed by the police because of their colour; maybe it is because of their language too. There was an incident, as you know, that people do not take taxis in Montreal because they are black drivers and are speaking French which does not associate with that colour.

I just want to draw an illustration because of some of the illustrations you brought forward. My daughter was about the age of seven at the time, a few years ago. She came home and said to me that someone on the street had stopped her and asked her where she was from and she said, "I told them Canada, daddy." I said, "That sounds good," and she said, "They didn't look too happy." I said, "What do you mean?"

The next day she said someone stopped her again coming from school and asked her, "Where are you from?" She said, "I'm from Canada," and they asked her, "Where's your dad and your mom from?" She said, "Jamaica." So they said, "Oh, so you're from Jamaica." I said to her: "Well, it's the same there. You ask them where they're from and where their mother is from, or where their grandmother is from and if they say, 'Britain,' then you say, 'Oh, you're from England.'" It is just a matter of when we came.

I draw that illustration because there are people who are here 300 years and, as you said, there is the traditional culture, our set culture. To use something I have always used, somehow there is a culture here that is playing the last hurrah. We are going to hold on to that tradition itself.

We continue to have history—I will come to a question—and I want to make this comment: We have come to a crossroads in our history now. Next year I think we will be celebrating 500 years of Columbus. There is a lot of money being spent, and the history does not examine that, the discovery, and if I dare say, this individual was lost. He thought he was in India, and we celebrate all of that when he went to the West Indies and we called it West India, or West Indies.

My question, then, having made those comments is that the establishment and the continued establishment of advocacy groups here to protect—you as Ombudsman find that there are people who feel helpless within the system, and within the government, and within governments that have been established to protect their rights, and they have to come to you.

May I say to you, then, and ask you to comment on this: Even after this Constitution is written, even after the Premier may establish that there should be self-government, do you see, still, that helplessness will continue, that these groups will continue to form in order to have some of their concerns redressed?

Some of the bottom-line questions they are asking themselves are: "While I go forward, they're still asking me, 'Where are you from and do you have a right to the justice process that is here?' All I need to do," that individual is saying to you, "is to get my rightful place, to have a job and to be treated fairly." Do you see an expansion of more advocacy groups in order to assert themselves in this country?

The Vice-Chair: That was a five-minute question.

Ms Jamieson: That is a huge question. I will try and hit the high points. You are asking me to look beyond the development of the kind of Constitution I would like to see in this country and whether that is going to make a difference for advocacy groups and whether, maybe, it will make a difference in the life of the Ombudsman.

I should tell you that we did an opinion poll last winter and I found that those who are most vulnerable in the province are more likely to have complaints they need to have dealt with. I see from many of the issues that come across my desk the ones who do make it to us, who overcome the obstacles, who find out the necessary information and so on. A lot of the complaints have to do with the fact that they have been disregarded, not treated with respect, not given an opportunity, not accorded the reasons for decision-making, and so on.

I take from this, and from my experience in other posts, the fact that people across the country have and continue to look for an opportunity to participate. If the Constitution provided that opportunity to participate for the people who have been excluded heretofore, perhaps our energies would be focused on maximizing that opportunity. Once the channels are open, once the places are there at the appropriate tables, there will be an opportunity to dialogue, as opposed to clamour to get to the table.

That is the kind of Canada I would like to see, where there are many chairs at the table, where nation-building is an evolutionary process, where issues can be raised next year by the disabled community, or this year, and next year

by another, and an opportunity for the country to focus on those and to allow the country to evolve and the Constitution to provide the room and the framework for that to occur.

Hopefully the helplessness will be turned into input opportunity, an opportunity to put forward ideas, to contribute and shape. That is what I am looking for in the future, that is what I am hoping to see in the vision of Canada I have for the future.

Yes, you are right, 1992 is going to be a year when there are going to be a great number of celebrations. I personally have thought a lot about 1992 because of my own heritage. It will be celebrated as a year of discovery. I think it is an opportunity for rediscovery, a terrific opportunity to rediscover that which we really did not take stock of the first time on through, and that is the contribution the indigenous peoples have made and continue to make and continue to attempt to make to the development of Canada and the world. I could not let your 1992 comment go by without saying that.

1040

Mr Curling: You are known to be a woman and a person of outspokenness and directness and I admire that. There are elected individuals around this province, and I am going to ask you directly if you feel the commitment is within those elected individuals to speak out directly to the issues that really address us as individuals. I say that because I think writing this Constitution is so important to all of us, everyone across this country.

There is a line that says, "Listen more to things than to words that are said." It is an African line. As we pass it through our heads, we will find it means a lot. I recall, actually, being even ridiculed about my accent inside Parliament here. The ricochet effect it had on those people who maybe see me as a role model was devastating to them and the sores are there.

Do you see—I am not asking you about Ontario parliamentarians; I am asking you about all—that the resolve is there within those elected individuals to face the issues head on and deal with them?

Ms Jamieson: You are asking me a very political question in a very non-political way. I guess my message is that not only should we recognize that people who have been elected to positions have something to say about constitutional development, but all Canadians want something to say and an opportunity to say it. I guess that is how I would answer that question.

Mr Malkowski: I am certainly very impressed with the presentation you made this morning and clearly you have been very straightforward and simple in the type of information you have passed on to us. One comment you made earlier was that it would be a benefit for the committee to share the kind of vision you have shown us today and to make sure that all people are included, aboriginal people and people from various ethnic backgrounds.

Traditionally politicians have in some ways ignored a lot of these people and we have to realize that there are a variety of cultures and a variety of people in Canada. The vision you have talked about has been one of flexibility

and a life process. I think those points, specifically, are things that we as a committee must consider carefully.

I have two specific questions for you. Yesterday we heard from Professor Graham and one of the comments she made was a concern about who in fact participates in constitutional discussion, that it is important that all provinces and the premiers of all provinces be involved, but that we missed out the Yukon, the Northwest Territories and native people, who in the past have not been involved, and that without that inclusion of the Yukon, the Northwest Territories and native representation, then the Constitution agreement will fail. Can you comment on the remarks made to that effect by Mrs Graham?

Second, can you advise this committee on some of the important players who need to be involved in the Constitution agreement? I know we have talked about aboriginal people. We talk about specific groups, but maybe you could give us some specifics about who you see needs to be involved. Maybe you have advice on some specific individuals who really need to be involved and people who have to be represented when we talk about the Constitution.

Ms Jamieson: I did not have the privilege of hearing Mrs Graham's presentation yesterday, but I will try to respond to your comments about it. I am saying that constitutional development is a responsibility for all Canadians and that room needs to be made for Canadians who have heretofore been excluded to have an opportunity to put their views forward. That extends, yes, to aboriginal peoples. Last time I watched a conference on the Constitution, I did not see too many women at the table.

There are a number of obvious groups which are clear when you walk down the street and are in a subway car in downtown Toronto, but which we do not see participating as fully as they might in constitutional development. Looking at constitutional development from the perspective of opening up space and providing an opportunity, many people think that is a nightmare, that it is an administrative nightmare, that it is unmanageable. How are we ever going to do that? I suggest to you it is a nightmare for some of us to continue to argue about, fight over, divide up Canada as we know it while keeping the masses out. That is the nightmare I see. The continued exclusion is the nightmare, because we will have to face it. We will have to face the rest of Canadians and their needs, their desires, their demands sooner or later. Why not do it now? Why not do it sooner?

There are a variety of ways one could involve these people. I have thought of a couple of them. You undoubtedly have a whole raft of options. One of the suggestions that occurred to me is that one might have, on an ongoing basis, perhaps for a decade or so and perhaps evolving into a permanent mechanism, a kind of constitutional conference secretariat. We have had conference secretariats in the past, but they have been administrative support only.

I would see such an organization belonging to no one party, belonging to no one government, because I think the optimum would be to even have constitutional discussions where the federal government could participate not as host or chair, but as a party, as one of the parties to the process.

If you had a conference secretariat—constitutional secretariat, constitutional commission, call it what you will—

which could expand or contract, which could involve the people who needed to be involved depending on the issue on the agenda—it would be an expanding and contracting commission, assembly as it were, and if the agenda—let's face it, we are not going to deal with all the agenda items this time around; that is very clear. I hope we will focus our attention on getting the vision right, getting the foundation right, getting a framework that is flexible, accommodating, so the people who do have something to say about the issues affecting them can have a direct role.

I would see the mechanism I have talked about as being one focal point, mutually acceptable to all governments, that would be mandated to bring together the people who have something to contribute on the point, and which would be mandated also to come up with a series of options or proposals which could then be debated in the appropriate forums, and then we could reach a consensus. That is one way of going at it. There are many, but that is one that kind of commends itself to me.

I am loath to list groups. I do not expect that I have an exhaustive list and I would not want to exclude anyone, but I suggest to you that if the approach we took from here on in was inclusive as opposed to exclusive, those groups would readily identify themselves. We would not have to go looking too far. What we have to do is have the attitude to go after it with an inclusive perspective, a willingness to listen and a willingness to look for accommodation.

1050

Mr Wessenger: I enjoyed your presentation, particularly with respect to the area of flexibility. In that regard, I know you did not give any specifics, but let's take the area of division of powers. Would you prefer a Constitution which allows greater flexibility in the division of powers between the provinces and the federal government and to leave more of that to the question of political negotiation, rather than having it rigidly put in the Constitution?

Ms Jamieson: I think it is pre-emptory to focus on those questions until we get the vision, until we get the framework right. Do I see a need for greater flexibility? I see Constitution-building and nation-building as an ongoing process. I see federal-provincial discussions continuing over time. I see a realignment happening all the time, whether we recognize it constitutionally or not. It is an ongoing process. I think there needs to be the necessary flexibility to permit that to continue.

Perhaps in the future we will have discussions involving aboriginal governments as well as federal and provincial governments that somehow need to be reflected in the Constitution. But I really am loath to get into a detailed tinkering with the existing, a sort of 1991-92. I do not think that is my message.

Mr Wessenger: Would your message then be that we should concentrate first of all on the whole question of, for instance, the Canada clause and what Canada is all about?

Ms Jamieson: I think my message is that we should look behind the Constitution as it now stands and get that right.

Mr Wessenger: The last question is on the whole question of embedding social and economic rights in the Constitution. How do you feel about that?

Ms Jamieson: I feel that, again, the focus of what I have to say today is that we need to look behind the constitutional document. Constitutions certainly include the rights of all, and I think they should, but underline "all." I think we have a little problem with that these days. I think we have done a fair bit in the individual rights area. We have a big challenge in the collective rights area, and I am confident that if we get the foundation correct, the clauses will follow. If we focus on the clauses that are there right now and try to fix them up, I think we will be missing a fabulous opportunity.

Mrs Y. O'Neill: Mr Wessinger asked one of my questions so this will be shorter than I expected. I want to thank you for finding the time to come this morning. I also want to congratulate you publicly for receiving your doctorate from Carleton University. Thank you so much for sending me your very inspiring remarks on that occasion.

Ms Jamieson: Thank you.

Mrs Y. O'Neill: We did quite a bit of work with aboriginal issues yesterday, as has been mentioned. I just wondered if you could say something about the Metis quandary, and second, what you can say about guaranteed representation, which is being examined in certain forums right now.

Ms Jamieson: I do not feel at all qualified or feel it would be appropriate for me to comment on the Metis issues. I can tell you that I spent about 18 months on a special committee out of the House of Commons in 1982-83 that examined the issue of Indian self-government and made some comments on constitutional amendment at that time. Perhaps it would be of interest to your researchers to have a look at it for you. We did comment on the issue of guaranteed representation.

I can relate to you by way of some answer to that a story that represents what we heard. We were travelling in British Columbia and the people of the Haida nation consented to come and see us. Normally we would have to go to them in the Queen Charlotte Islands. In any event, they consented to come and see us. They spoke to us, made a presentation to us, and they were asked about guaranteed representation, whether X number of members or senators or whatever would satisfy their concerns. From the elder who was speaking to us, there was a long pause, a long period of silence. His response was: "That's very interesting. I was thinking more along the lines of an ambassador."

That represented his view and is not unlike the views held by some other aboriginal groups in the country of the relationship that they felt and feel is appropriate in the country. I do not suggest for a minute that is representative of all aboriginal people, but that is one of the things that stuck in my head, the reply to that question when we toured the country, but you might have a look at the report.

Mrs Y. O'Neill: Thank you. We have not had that word used in this context.

The Vice-Chair: Thank you very much. Unfortunately, we are running out of time. There were still a couple of questions, but unfortunately we do not have the time. Are there any last comments you would like to leave with the committee?

Ms Jamieson: Only to wish you well. I am really excited by the opportunity. We were talking earlier, one of the members and I, about what a moment in time it is in this country and what a fabulous opportunity it is to be involved in this process. I am just delighted I have been able to come and share my views with you. You have an incredible task ahead of you. I wish you well. I hope I have been of assistance, and I would like to thank you.

The Vice-Chair: We feel quite privileged for having the opportunity to have heard from you this morning, because we understand your schedule and your responsibilities are such that they might have kept you away from us. We appreciate your coming.

1100

BLACK BUSINESS AND PROFESSIONAL ASSOCIATION

The Vice-Chair: We have next presenting to us the president of the Black Business and Professional Association, Dennis Strong, if you would come forward please. Mr Strong, you have a 30-minute presentation.

Mr Strong: Good morning. I would like to thank the committee for inviting the Black Business and Professional Association to be part of its information collection. I would also like to say that the briefing I received underlined some concerns that have come to my attention since my recent election to the position of president. My opening comments will be more related to the concerns and issues that have been spontaneously brought to my attention and spontaneously identified through the community as falling within the responsibilities of community leadership, and more particularly the leadership they expect from our organization.

The calls of late have centred around the issues and the conflicts that are going on in Halifax and Montreal. Those racial conflicts have implications that reach right into this room. Thematically I would like to position it by saying that silence gives consent. To say that to have these events occurring without there having been some voice of outrage and indignation among those of us who are supposed to be leaders is considered to be a serious shortfall and it needs to be corrected.

In addition to that, it raises the issue we have heard in previous reports around the viability, the need for multiculturalism. It raises issues around the strategy for addressing the question of national unity.

It seems to me that strategically we have been approaching this national unity issue from the standpoint of: "What do we need to do to ensure that the situation in Quebec is addressed? We need to see how we can reappropriate the power among the two founding nations."

This concept of two founding nations I think is where the problem lies, because in actual fact the aboriginal people have not had their primacy acknowledged except in a way that was given grudgingly, and the fact that this is a nation of immigrants and increasingly a nation where there are more and more immigrants who are not part of a Eurocentric culture raises some concerns that need to be dealt with by the stance this province and this group can take.

First of all, I believe that instead of playing the language game and playing the, "How little shall we give

up?" game, we need to recognize that we are in the throes of needing to redefine Canada and redefine what it means to be a Canadian. That redefinition needs to be inclusive rather than exclusive, and it needs to acknowledge the problems that have been created by forms of systemic discrimination that permeate everything from employment to social access to even actual political access. So I believe that the whole task here revolves around redefining Canada, rather than tinkering around the old edges.

How does this relate to Halifax and Montreal? The fact is that in Halifax we have a community that has been there for as long as many people have been in this country, the so-called founding nations. I have heard from my members that the paved roads actually stop where the community begins. Most people are familiar with the upheaval and the razing of Africville, but there does not seem to be an acknowledgement that there has been a consistent stance that says black folks are expected to receive unequal treatment, although when I talk to my colleagues, my clients and my white friends, they all readily acknowledge, and perhaps you will too, that if a person is not white in this country, he is very likely to experience discrimination, is very likely not to have received equitable treatment.

This is not to say there are not programs under way to try to address these issues, but those programs require a great deal of political will and politics is being played with it. Just as we did when we were talking about and chastising South Africa, there needs to be some acknowledgement that there are some fundamental things that go on in our country that contribute to rather than diminish the kind of systemic discrimination that goes on. Words alone will not do it. I believe the action that is called for is for everyone who has any position of responsibility to include a personal commitment to speak out when they see various examples of our inclusion of everyone being contravened.

I will pause here, because I did not keep track of the time and I want to make sure you have an opportunity to ask whatever questions you need to ask.

Mr Curling: I first would like to congratulate you, Mr Strong, on your appointment as president of the Black Business and Professional Association. I am quite familiar with the work they are doing and the challenges that are ahead, especially in this time of recession, a process that black people especially are going through. I mention that because, as you said, it comes at a time when we are looking as a country at redefining ourselves.

Your statement was that silence also gives consent and that as politicians or leaders in the community it is the responsibility of us, and I include myself here, to speak out. What would you feel is the reason for this silence itself? Would you see this as fair or going against the norms of things? Could you comment on that? What would be the cause of this?

Mr Strong: I will use an anecdote to describe what I think is typical of the reasons for silence. I was at a conference at the University of Western Ontario this summer, and a person came up to me from the maritime provinces and he said: "I know a friend who is having a problem, and that problem is that as a staff member of this bar, the owner has

a policy that specifically excludes the admission of black people. The person I am talking about is torn because it is a good job and jobs are scarce, but that is a condition of employment." Therein lies the kernel. He said: "The problem is even further because I have a black friend who came to me about a problem that they had with this establishment and asked me to go to bat with the owner because I used to work there and I know the problem well, but I can't afford to do that. You see, I am involved with a prominent organization, and I have not been in my position for very long, and how would they take it? This is accepted. The police know about it, the politicians know about it, so why should I stand up?"

On the other hand, when there are people of colour who find themselves in a position where what they can say can have some influence, they are concerned about whether or not that position of influence will disappear, whether or not the image of being able to cross over and serve everyone will be compromised when you speak out in the interest of your own group. So these are two of the major factors that permeate the environment we live in, and I do not think it is healthy.

Mr Curling: Let me ask one question in the sense of multiculturalism. As we speak, many times we hear about black and hear about white. I myself wrestle with what a black culture is, because as we move within the black community we know that a Trinidadian and a Jamaican and a Barbadian are quite different people when it comes to culture, or if we go further, a Dominican speaks a different language itself.

As we here wrestle in hearing proposals and putting together, as the Ombudsman said, this very perfect paper called the Constitution, do you think that itself brings about more complexity or confusion in putting together the representation of all people of this quite diverse multicultural society? How would you explain to the committee here what would be blackness, and when you speak about that, culturally, how would you define that?

1110

Mr Strong: I will go back to something that happens when we have these employment equity surveys and the like, and that is that there is a self-selection. To really fall under the umbrella of black people has a couple of criteria. One, you have to acknowledge that you have common needs, concerns, and experiences with other people who have African ancestry. The other part of it is something that happens a bit more inadvertently; that is, because of the other circumstances I describe, you can transcend all of these national boundaries by being able to recognize those circumstances where your blackness, your visible identity, puts you at a disadvantage. It provides an added burden. It puts an onus upon you that is not upon other people.

The simplest and most common way I have of describing it is that when it comes to human rights and civil rights and race relations, my involvement in these things is not optional. I encounter them every day, I must experience them every day, and this is true of all black people. Some choose to ignore it. Some would prefer to say that is something they have not experienced, but that is more in the

context of not having acknowledged it rather than not having experienced it.

Mr Winner: There was a time when we did not have a Human Rights Code, when we did not have a section 15 equality provision in the charter. Mr Curling referred obliquely to a case in Montreal where a man was denied access to a tavern because of his colour: the York Hotel case. There are other cases where people were denied access to commercial licences because they happen to be Jehovah's Witnesses: the Roncarelli-Duplessis case. Since 1982, at least in Ontario, we have had our present Human Rights Code. Since 1985 section 15 has been proclaimed, which is supposed to ensure equal access. I am just wondering if you can tell me how well these legislative provisions are working from the point of view of your association and maybe the black community in general.

Mr Strong: I will add another perspective on it, because I also had occasion to work for the race relations division of the Ontario Human Rights Commission. I can tell you that one of the sources of my frustration was that, first of all, the person who is discriminated against has to exert a lot of time, a lot of effort, and frequently a lot of personal risk to raise the flag and say, "This isn't fair." It is a very common practice for people to say, "There you go crying racism again," as though you are crying wolf. Those people who actively seek to exercise the rights that exist under the code are in many respects proscribed—they feel constrained—from being able to do so.

The other thing is that there has not been, and there does not seem to be, the political willingness to actually have the government take proactive initiatives. We have seen in the media countless examples of a little work that was undertaken by the Urban Alliance on Race Relations at York University, where they sent out applicants, black and white, with the same qualifications to interviews. We have seen documentation of the overt and blatant discrimination. There have been surveys and studies that show the managers and the executives at that time admitted that they would discriminate, that they had a bias against the inclusion of people who were visible minorities and women. Yet once these things become public, the apparatus takes no action.

In actual fact, in the context of being a behaviourist, what you are doing is rewarding unwanted behaviour. You are saying, "Okay, we know it's tough on you." When it is time for employment equity, remember who owns the media, so the interpretation is that employment equity is reverse discrimination that is going to impose quotas and that as a result we are going to suffer a diminution of the quality of our workforce. Well, excuse me. I happen to be a management consultant who deals in quality, and I happen to be particularly responsible for helping organizations identify why they do not perform well. A very substantial part of it is the inability to recognize and make use of more diverse resources so that you can respond to the changing needs in the marketplace. We have once again silence giving consent, and on the other hand that causes the myths and the misinformation to grow and not be things that are workable.

Then you get this impression that multiculturalism has to be a big drain on our society, that it has to be something

that is undermining and dividing our country rather than bringing it together. This is not true. But people do not want to look behind the things and see why multiculturalism is necessary. You have probably had occasion to be an individual who was seeking to enter a group where you wanted to be a member. It is easier to make that entry if there are others who would support that or others who want to do the same thing or are similarly deprived. A failure to have multiculturalism that is proactive and addresses the real issue of racial inequality and racist practice within our society is the reason multiculturalism gets a bad rap. It gets a bad rap because we use the political jargon to allow it to become a competition between everybody who does not have what he wants. I rambled a little bit, but these are just some of my pet concerns. I hope I have responded to your question.

Mr Winniger: The question was, basically, how is our human rights legislation responding?

Mr Strong: It is not, very well.

Mr Offer: Thank you for your presentation. I certainly do not mind the responses I am hearing. They provide many more questions. I think, as legislators, we are sometimes left with certain initiatives on which we try to get out information. Then sometimes it is misinterpreted, which is called misinformation, and then there are others that interpret it on the basis of perception, which I refer to as mythinformation. The real problem is talking about what it is that you are trying to do, why you are trying to do it, and how you are going to accomplish it. I think a lot of the concerns, and in many cases the fears, would just go away.

My question to you is, from your perspective, and you have a fair degree of experience, what is your feeling about people and their real ability to input into government, whatever the issue may be? We travelled last winter on this matter and people came before the committee, and there was no question that there was a real sense of distance between those who sat in your seat and those who sit in this seat. We talked about how it is we can get people to be part of this Constitution formation, whatever it is. In fact, people were talking about something much more basic. They said: "Sure, that's a difficulty, but we don't even feel we can input some of the more basic needs and wants that we have in terms of legislation, initiatives, policies. It is not so much at a constitutional level, but indeed at an everyday, affect-my-life level." I am wondering if you, in your position, have experienced that, and if you have any advice you can give to us as to, is there a way we can shorten the distance between us and the people, the general public?

1120

Mr Strong: I welcome that question because that in itself is the first step towards being able to get closer. I will say that everybody is tuned into the same station and it is called WIFM—What's In It For Me? That is not a put-down; it is a reality. Your comments sort of bear that out. One of the things that has happened with government, and it is a source of frustration, is that there seems to be this whole culture that conspires to not tell it like it is, down to the language, the euphemisms, the symbolism; this gets to be a symbol for that and something else gets to be a symbol

for something else. It is hard to unravel it all. It exhausts your energy and exhausts your resources to try to make sense of it all.

I had occasion to make a contribution to a study or consultation being done by the Ministry of Education. This is a process that has been going on for a while in terms of how we are going to be able to allow the parents of children who are designated as needing special education to have some say in the process. The fact of the matter is that there was no feedback from the initial consultation. Now we are back asking some more questions, "What did you do with my stuff?" So I believe that the approach to communication is flawed. I think a healthier approach to communication would be one that takes the time to acknowledge that you have asked for something, and takes the responsibility to say what you heard and what you have done with it. By doing so, you earn the right to come back and ask again. If you do not close that communications loop, if feedback in plain language, in the language of the people who have given you the information is not a performance requirement, then you will have distance and you will have distrust.

I can tell you that having grown up in the United States, I believe that on a personal level my access to government is far greater than I have ever experienced anywhere in the world. I applaud that, but the perception and the access for the larger group of people is going to require a very basic change in communications philosophy and policy. That is a long answer to a short question.

Mr Harnick: Just very briefly, in your presentation you talked about the concept of the two founding nations. We have had numerous people come before us talking about that concept and talking about expanding it to three founding nations. Now you come and quite eloquently, and I think quite properly, tell us that the concept of founding nations is no longer relevant.

Mr Strong: That is right.

Mr Harnick: It would be of benefit for the committee, I believe, if you could elaborate on that. I think your response to Mr Offer in some degree answers that question, but if you could give us some further elaboration, it would be helpful.

Mr Strong: Let me give you a street version of what is going on here. There is a concept called "almighty whitey," and that is an expression that gets pinned on numerous situations where it is very apparent that action was taken to reinforce a notion of white superiority. Not appointing people to senior positions: You go through the Report on Business in the Globe and Mail and you see all these appointment notices, and in the 12 years I have been doing that I have seen maybe nine black faces, and that might be high.

Then you look at the conflict, between Quebec and who? Who are they conflicting with? They are conflicting with a value system that says: "There is a superior way. We found it, we're keeping it and you lost, and we're preoccupied with keeping you in your place."

My goodness, we have Oka and all these land claims. If you read the comments that are being made, sometimes explicitly they are saying: "Look, you're crazy. We got this.

You don't expect us to give it back." If you did not straighten it out before, it was sort of let the buyer beware. So our ethics are not such that we can be trusted to keep our word.

I would say that all the people sitting around this table would cringe from being described in that way. What happens if somebody catches you at it is that it may not have been what you intended, but it has become a reflex now. It has happened for so long that it is inadvertent, but the people who are getting it in the neck do not want to know, "That's my reflex." You cringe and so what happens is that we have gone and we have said "multiculturalism" and "employment equity." We have used these terms in the place of anti-racism. They changed the name of the race relations division to anti-racism; there are still people who are crying about that. But you had an effective way of dealing with that: "Don't give them any power. Don't allow them to have any leadership. Have conflicting bureaucratic envelopes for them, so they do not know who they belong to." We talk about access out of one side of our mouth and we do something else.

These things have become historic. Once again, I grew up in the United States and there is an historic conflict there that I question can ever be reconciled. But here we have an opportunity to really do something meaningful. Here we have an opportunity to stand up and fess up and move on. All we have to do is say, "A lot of these things, it wasn't what we intended to do, but we really better change it because it is working against us all." When you start talking about founding nations and language primacy and things of that sort, people who are not caught in that loop are saying: "What is this? What am I? Chopped liver? I'm here. I'm paying taxes. I'm abiding by the law. I probably put 30 to 40 hours a week into trying to help this country grow, and then I got to take this? No."

What we need to do is give some true manifestation to the fact that everybody is equal, that the rights of everybody in this country are absolutely the same. They deserve the same protection and they deserve the same outcry when they are being violated. They deserve the force of the law and they deserve the protection of our legislators. From that standpoint, I believe what really needs to happen here is that we are going to have to put aside these old feuds. We are going to have to stop this childish power struggle, this dialogue of the deaf, because you cannot win it. We are going to have to give legitimate power and authority to a broad cross-section of entities. It works.

One of the things I do in my practice is group facilitation, and time and time again we have groups of people come in who are of varying backgrounds, varying points of view around something that is very crucial. We find out where WIIFM is for each person with respect to a particular action. Instead of trying to treat this thing as holus-bolus, you might want to take a more corporate approach, where you are looking at key performance factors, key results areas and break it down task by task and make sure that you do not move forward without getting a broad cross-section of input. Did that help?

Mr Harnick: I appreciate it. Thank you.

1130

Mr Malkowski: Your presentation today I think really hit it on the mark several times. I certainly can sympathize when you talk about oppression, be it oppression of minorities, women, disabled people, aboriginal people and so on. I think we have to look at what causes this oppression. You have talked about some of the myths and some of the attitudes that lead to that paternalistic way of looking at other groups.

To talk specifically as it relates to the Constitution, do you it is important that people have access to the justice system, and in many ways also to financial help because the amount of money and energy that is involved in trying to get involved in any legal action and to get involved in the legal system is often very difficult for people.

Also, educationally, how can we work to end the type of racism that we often see? How do we include sensitivity training in the educational system and how do we get representation from a variety of groups within the workforce? If we implemented some of these ideas, if we had within the educational system ways so that people became more sensitive at that time in their lives, if we were able to include more people from a variety of groups in the workforce and if we were able to give the financial means to people so they could really access the judicial system, do you think that would in many ways lead to a solution of some of these problems?

The Vice-Chair: I would ask that you make your comment fairly short because we have another presenter at this point.

Mr Strong: First of all, I agree that some of the crucial areas are education and the legal system. I also agree that there are financial implications that often act as barriers to people being able to participate fully in society. When you talk about sensitivity training, I believe there is going to have to be some sensitivity leadership. There have to be sensitive models before people will actually be able to develop a curriculum of sensitivity in school systems.

The criminalization that happens, particularly to black children and to native youth, is something that is more a byproduct of negative stereotyping and racist attitudes and inclinations than it is of finance. A simple example is that we still have a large number of young people who get caught in the pranks of youth and get absolute discharges. That is less likely to happen for a black child. It is less likely to happen for a native child. Let's start at the fundamental things that do not really cost a lot of money, but just call for a change in attitude and behaviour. We need to be very careful what we reward.

The Vice-Chair: With that, Mr Strong, we would like to thank you for your presentation.

ROBERT MARTIN

The Vice-Chair: We have Robert Martin presenting to us next. He is professor of constitutional law at the University of Western Ontario and I am sure that what he will be presenting will be interesting. The committee has seen that his speciality is constitutional law. I believe you are the

first professor of constitutional law we have had so far. I might be correct. You have an hour.

Mr Winner: Anne Bayefsky

The Vice-Chair: Thank you; I stand corrected.

Mr Martin: Thank you for that observation, Mr Chair. I would think it would be appropriate to congratulate this committee on the fact that I am only the second professor of constitutional law. It seems to me that one of the basic rules any process of constitutional reform should follow is that the fewer professors of constitutional law involved, the better.

I would like to begin, if I might, by just taking a very few seconds to tell you a little bit about who I am so you have some sense of where I am coming from and how I come to be saying the things I am saying.

Although I teach at the University of Western Ontario, I was in fact born in Toronto, grew up in Toronto and went to school in Toronto. After finishing high school, I attended the Royal Military College of Canada in Kingston, graduated from there, served in the Canadian regular army and went to law school at the University of Toronto.

After completing that, as many people did in those days, I joined the Canadian University Service Overseas and went to Africa where I spent the next decade teaching in a number of different African university law schools, specializing in and having an interest in constitutional law. I spent a year at the University of London, studying African law and Islamic law and eventually found my way to the University of Western Ontario. I continue to have a very active interest in African matters. I have spent sabbatical leaves and travelled on a number of occasions back to Africa. I have an active interest in the Commonwealth and, at the moment, among other things, I am a constitutional adviser to the African National Congress of South Africa. I teach constitutional law at the University of Western Ontario. I also teach media law. Very briefly, that is who I am.

I would like to begin my substantive remarks by saying a little bit about this process of constitutional reform with which Canadians have been mesmerized for more than three decades now. This process that you are now involved in began, to give a precise date to it, on October 6, 1960. A conference of attorneys general, chaired by the then federal Minister of Justice, was held in Ottawa to look at questions of constitutional reform. There began a process which continues today and which appears to me, at any rate, to be endless. I suspect it is the fate of this country to be involved eternally in attempting to reform its Constitution.

We have, as I have suggested, become mesmerized by our national quest for the perfect Constitution. We seem to be convinced as a nation, as a people, that there is a perfect Constitution to be found out there somewhere, and that if we search long enough and hard enough, we will find this perfect Constitution. Having found the perfect Constitution, all our problems will thereby automatically be solved. It is as if we believed as a people that if we could create the perfect barometer, we would thenceforth have ideal weather.

I would like to suggest to you that there is no such thing as a perfect Constitution, and that even if there were such a thing, getting it would not magically solve all our

problems. A Constitution cannot create a perfect society. The people who live in that society, through their political interactions, through their social interactions, through their cultural interactions, shape and create that society. A Constitution does not do that. We have in this country, I think, invested constitutions with almost magical properties. I would like to remind you that constitutions are not real things. We have come to believe, I think, that they are real, living, concrete things. Constitutions are simply words on pieces of paper. By themselves they are capable of nothing. They must be applied. They must be made concrete by human beings.

What can constitutions do? What is possible with constitutions? I would suggest that some fairly modest things are really all that constitutions are capable of doing. Constitutions create the basic institutions of the state. They define the institutions of the state. They give powers to the basic institutions of the state. Second, they define the relations between the state and the citizen; they define the rights and responsibilities. I think it is worth emphasizing that correlative notion of responsibilities. We seem to have become very much affected, and I will return to this point, by the American notion that constitutions simply create rights for individual citizens. But the Constitution does and must also cast duties and responsibilities on citizens.

Finally, a Constitution can in, very broad terms lay down certain general goals or general principles which should guide the state. But it can of course in no way, in and of itself, guarantee that those goals or principles will be achieved or fulfilled. The Constitution, then, is simply the framework within which political activity takes place in the state.

I think it is also important to recognize that constitutions are or should be seen as different from ordinary laws. Ordinary laws are passed often to deal with momentary or fleeting crises or issues. Constitutions are, in theory at any rate, intended to last. Constitutions are not something which should come and go, which are changed regularly. They are meant to be there over the long haul. I would suggest to you—and this criticism is by no means restricted to this committee or to anybody in Ontario—that our approach to constitutional reform in this country has been based on some serious misapprehensions about what is possible in the crafting of constitutions. Let me briefly suggest what I see as some of these flaws.

1140

First, and I think fundamental to the process of constitutional reform in this country, has been a systematic effort to abolish or deny our own history. This country has a history. This country has a culture. This country has tradition. Constitutions should be an expression of the history, the culture, the traditions of a particular society. Making a Constitution is not like going to the supermarket. It is not simply a question of going down the aisles and picking whatever happens to be attractive and putting it into a shopping cart.

One of the things that was very obvious in the early period after independence in Africa, for example, was the failure of the constitutions that were imposed upon African states. A fundamental reason for that failure was that the constitutions imposed upon those states were an expression of the history and the culture of the United Kingdom.

They did not arise out of the experience, the history, of Tanzania or Kenya or Zambia or whatever.

In our process of constitutional reform we seem to be almost obsessively attempting to forget that this country has a history too. We seem also to be denying democracy. We seem to be disregarding the necessity of strengthening democratic values and democratic institutions. We systematically undermine our democratic institutions; in particular, our legislatures. We delegitimize politics. We increasingly believe in the quick judicial fix to all social problems.

We have been very much denying the fundamental notion, a notion which I would suggest underlies all democratic politics: the notion of the citizen. We have in our process of constitutional reform been focusing far too much, in my view, on interest groups. When we focus on interest groups we deny the citizen. We deny the citizen, who is, I would suggest, a multifaceted man or woman. A citizen is a man or woman who is reacted upon and who reacts to and makes decisions about a whole host of issues and concerns simultaneously. I would suggest that a member of an interest group is, by contrast, a narrow, one-dimensional human being. I fear we are involved in a process of constitutional reform where at the end of the day what we are going to come up with is something that will resemble a treaty among interest groups, not a Constitution for a state.

Third, we have throughout this entire process been progressively Americanizing our institutions and our ways of thinking about our institutions. We have almost reflexively been reaching for American solutions and American institutions and American values. We do have—to repeat—our own ways of doing things. It is certainly not apparent to me that American ways and American institutions and American values are superior.

We have been putting more and more power, more and more authority, in the hands of courts, and especially in the hands of lawyers. We are increasingly giving up the business of being active citizens in a democracy and handing over our political battles to lawyers, to be fought out on our behalf in the courtroom. That is not the way citizens in a democracy operate. A contemporary buzzword is that of “empowerment.” People like to talk of empowering individuals or various groups of individuals today. May I suggest that what constitutional politics does is not to empower people; it is to empower lawyers. The beneficiaries of constitutional change in this country over the last decade have overwhelmingly been lawyers.

I would suggest that our process of constitutional reform has been shot through with an almost obsessive liberalism, which does two things. First, it focuses on the individual as being at the centre of politics and social activity. To repeat a point I have already made, it is not part of the Canadian tradition. The individual certainly has been at the heart, has been the very soul, of the American political system, of American values, of American ideas. Our traditions have been much more collective and much more social, yet we focus more and more on the individual.

Finally, we seem to imagine, as the other aspect of what I would call an obsessive liberalism, that we can have a constitutionalism which knows no limits, that we can have everything for everybody, that we can—to repeat the

point I began with—make a perfect world through constitutional reform. This is an illusion.

To illustrate this fact, I would remind you of the results of the recent Askov decision by the Supreme Court of Canada. As you recall, Askov is the decision in which the Supreme Court of Canada last fall said that any delay of more than eight months in bringing an accused person to trial is considered to be unreasonable and is therefore in violation of rights guaranteed under section 11 of the Canadian Charter of Rights and Freedoms. The result of the Askov decision has been that in Ontario alone roughly 40,000 criminal charges have been dismissed. What is the problem with Askov? It seems to me the problem is very simple. It proceeds from this belief that we can have everything. We can all have rights. We can guarantee that accused people are treated nicely. We can guarantee that victims are treated nicely. We can guarantee that everything is wonderful. But it does not work that way. There is always a price.

Let me just say a couple of words about some of the specific issues this committee is to deal with. First is the question of the Canada clause. Might I just note parenthetically that, although it is not officially called this, we already have what is known as a Canada clause in our Constitution. Section 23 of the Canadian Charter of Rights and Freedoms, which deals with minority language education, is already known to all lawyers and others interested in these things as the Canada clause. May I also say that the Canada clause strikes me as institutionalized piety. What are we trying to do in this Canada clause? Are we trying to have a formal statement that says Canada is the swellest, nicest country in the whole world? That seems to me the essence of what is being suggested for the Canada clause. We are going to say we are the nicest people on the face of the earth; we have the nicest Constitution ever.

Before I come to the charter, which is what I want to talk about primarily, let me say a little bit about the suggested commitment to multiculturalism and the form which it is to take. There is, it is suggested, to be a declaration that says that all cultures, all values, all creeds are equal. May I suggest that this is yet another manifestation of that obsessive liberalism I talked about. More precisely, it is something which sociologists call cultural relativism, which suggests that all cultures, all values, all thoughts and all ideas are equal.

1150

It seems to me, to begin with, this is a very serious misapprehension about the very nature of culture. Culture is not, as I think we often imagine in this country, simply a matter of the way people dress, the ceremonies people engage in, the dance people adopt or the foods that people like to eat. Culture is something far deeper and far more profound than that. Culture has to do with fundamental values and ideas about human beings and their relation to each other in society. It is simply not true in any context that all cultures are equal in this sense. All ideas are not equally sound. All values are not equally human. To be more concrete, all values and ideas are not equally desirable in Canadian society.

Let me give you one very obvious example about a Constitution saying that all values and all cultures are equal. There are cultures in this world, to take one example, which recognize polygamy. By saying in a Constitution that all cultures are equal, would we be saying that we thereby implicitly give our approval to polygamy? I suggest to you that is a reasonable implication from a formal constitutional recognition that all cultures are equal. I also suggest to you that the possibility certainly exists that this kind of multiculturalism means, in effect, no culturalism.

It seems to me it is very important to recognize, as I already argued, that this country does have a history and that this country does have a culture. As we slip further and further into the embrace of the United States, surely one of the things that is incumbent upon us as Canadians is to rediscover ourselves, our identity and our distinctiveness. By officially adopting a position of no culturalism, I do not think we assist that process.

Finally, I simply note that this sort of declaration about multiculturalism would be absolutely, utterly, unequivocally unacceptable to the province of Quebec. One of the major things, of course, that we have to concern ourselves with is finding a new accommodation with the province of Quebec. I have not the slightest doubt that Quebec would find such a declaration to be absolutely unacceptable.

Let me also say briefly, and I agree entirely with the last speaker, that a fundamental requirement of a Constitution in a democratic society, it seems to me, is that it must guarantee the equality of all citizens. It seems to me a Constitution cannot do much more than that. There is a suggestion about strengthening the rights, for example, of disabled people. I repeat the point that all a Constitution can do is to guarantee the equality of all citizens.

I think there is some confusion here between the proper functions of a Constitution and of human rights legislation. A Constitution is not, I would think, some sort of supernatural human rights code. Perceptions about what should be in human rights legislation are going to vary over time. They are also going to vary from province to province, and that is one of the reasons we have a federal system in this country.

Let me just make a few observations about the charter. There is a view in this country, and I suggest that the questions this committee has prepared seem to indicate some support for that view, that the charter is wonderful, that the charter has been wonderful and that the more we can have of the charter the better. I take a very different view and, if I might ask your indulgence, I would like to tell you just a brief story, which you may well be familiar with.

In 1974, the Parliament of Canada made amendments to a federal statute called the Canada Elections Act. The Canada Elections Act, as its name suggests pretty clearly, is the federal statute that deals with the conduct of federal elections. These changes that were made in 1974 were designed with one overriding objective, to limit as far as possible the role which money plays in federal elections, to prevent federal elections in this country becoming, as they certainly have in the United States, the private preserve of the wealthy. I am sure you are aware that in the last national elections held in the United States the average

cost of a senatorial election campaign was around \$4.5 million. Clearly that means that national politics in the United States belong to the wealthy or those who have wealthy friends.

The changes made in 1974 were designed, as far as legislation can do this, to prevent that happening. So they said, first, that any candidate who got 15% of the votes in a constituency would get a subsidy, a rebate from Ottawa, to help pay for the costs of running election campaigns. As a corollary or a complement to that, the legislation sought to limit the amount of money that could be spent on election campaigns. There is a formula in the legislation. It said that candidates and parties can only spend a defined amount of money on campaigns. But the legislation recognized that there was an obvious way around these limitations.

Let me just suggest to you what the obvious limitation is. In the average federal constituency in this country, during the 1988 federal election, the spending limit was around \$50,000. Let's take an imaginary riding, the riding of London Northwest and that I am the candidate for the Flat Earth Party in the federal constituency of London Northwest and have a lot of very wealthy friends. I am able to raise \$500,000 to spend on my election campaign, but the law says I can only spend 50 grand. What do I do? What happens?

What happens is very simple. Overnight, magically, fortuitously, there comes into existence a group called the Independent Citizens Committee to Elect Rob Martin, nothing to do with me and nothing to do with the Flat Earth Party, just a bunch of public-spirited folks who think I would be the best possible candidate. What do they do? They spend \$450,000 trying to persuade the people of London Northwest to vote for me. So much for the spending limits.

The people who drafted the law in 1974 foresaw that, and they also foresaw that interest groups have a corrupting affect on election campaigns. What was said in 1974 was that only a recognized campaign committee of a duly nominated candidate can spend money and incur election expenses. It limited, obviously, to a degree the participation of people outside actual campaign committees, but it did it only during the period of federal election campaigns. These limitations were tested in the federal elections of 1979 and 1980. There were loopholes and the loopholes were obvious.

In 1983, amendments were made to the legislation to tighten these restrictions on third-party activity and on campaign spending. Amazingly enough, when these amendments went through the House of Commons they went through unanimously. It is very hard to believe. All three parties in the House of Commons supported this measure. It probably never happened before; it probably will never happen again.

1200

But what occurred after that? The charter came along, and the charter was seen by a group of worthies I am sure all of you are familiar with, the National Citizens' Coalition, as being a neat way of fighting against various restrictions on the rich. The National Citizens' Coalition went to court to attack these limits on election spending and was successful. Even though every member of the House of Commons had supported this legislation, one judge in Alberta held that it was invalid. One judge in Alberta then was able to overturn

the deliberate political decision of all members of the House of Commons.

What was the result? Well, we all know the result. During the 1988 federal election, corporations, and especially the Canadian subsidiaries of American corporations, were able to spend millions and millions of dollars persuading Canadians that free trade would be good for them and that they should elect a Tory government. The charter is the reason that was possible. Had it not been for the charter, corporations would not have been in a position to spend absolutely without restriction and would not have been able to interfere as they did in the electoral process.

The charter has not been the source of wonderfulness in this country. The charter has in fact been a means whereby those with money, those able to afford the services of lawyers, have been able to attack and very often successfully overturn the democratic decisions of elected representatives of the people.

There is another recent, obvious example. In 1988, Parliament passed a statute called the Tobacco Products Control Act. It is not a very catchy title, but the point of the Tobacco Products Control Act, as I am sure everyone is aware, was to prohibit the advertising throughout Canada of cigarettes, pipes, cigars and so forth. What happened? The charter made it possible for the tobacco companies to go to court to attack that legislation, and they have been successful.

The story in this litigation is clearly not over. This case clearly is going to end up before the Supreme Court of Canada, but it is an example of what has been happening over and over and over again with the charter. It has been the greatest thing ever to happen to corporations in this country. It has been the means used by corporations to attack democratically created limits on their freedom of action.

There is often the most bizarre pretext. Let me give you one of the leading charter cases, a case called Big M Drug Mart. Big M Drug Mart went to court to uphold freedom of religion. Is that not interesting? Why would a corporation called Big M Drug Mart be so interested in freedom of religion? The reason was that there was a statute which said Big M Drug Mart in Calgary could not be open on Sundays. Big M Drug Mart wanted to be open on Sundays. What did the charter do? The charter gave it a basis for going to court to fight for its right to be open on Sundays for freedom of religion, and the courts obligingly said corporations have freedom of religion. What a neat idea. I always wonder, when I look at this case, where do corporations worship? We all know what corporations worship, but where do they worship? If you look at the actual results in charter cases, you see over and over again that the charter has been about empowering corporations and empowering the wealthy to go to court and attack democratic decisions reached by legislators.

That is why, for example, I have a very different view of section 33 of the charter. Far from being the work of the devil, as I think many people tend to view it, I see section 33 as being the final, last chance for democratic politics in this country. I see section 33 as being the means through which the people's elected representatives, whether in a provincial Legislature or in Parliament, can assert the people's will against that of the judges.

Let me give you an obvious example of this. There is now a royal commission on election financing and generally about the organization of elections in this country winding up its work. Many of the briefs presented to this commission had to do with this issue of controlling election spending. It would seem to me that it would be a highly popular matter for Parliament to reintroduce these restrictions on election spending, and an obvious way to ensure that those restrictions were insulated from judicial review would be to rely on section 33, to say that these restrictions on election spending will operate notwithstanding the charter.

I would also say, very briefly, that the charter has had a profoundly Americanizing effect on Canada and our way of thinking. Do not take my word for that, let me quote the well known American political scientist, Seymour Martin Lipset. I am rather reluctant to do this because I think one of the unfortunate characteristics we have as Canadians is that we never want to believe that anything about us is true until we are told it by an American, but this is what Seymour Martin Lipset had to say: "The most important step that Canada has taken to Americanize itself, far greater in its implications than the signing of the free trade treaty, has been the incorporation into its Constitution of a Bill of Rights, the Canadian Charter of Rights and Freedoms."

I hope for the sake of the mental and intellectual health of everyone in this room that you do not have to read law reports very often, but for those of you who do, if you look at what our Supreme Court is doing these days, our Supreme Court has turned itself into an appendage of the US Supreme Court. It is almost by reflex now that our Supreme Court relies on American decisions, American doctrines, American textbooks and American articles.

It is actually very interesting that one of the things the charter has done, in my opinion, is create jurisprudential free trade. It has been very much like economic free trade with the US. It is entirely a one-way street. With economic free trade all the benefits, in my opinion, have flowed consistently southward. With jurisprudential free trade the doctrine has flowed consistently northward. If you read any recent judgement of the Supreme Court of Canada, you might be forgiven for asking yourself the question, do our judges understand that this is still a separate country?

I hasten to add that this is a one-way street because Canadian doctrine, Canadian jurisprudential ideas have not had a corresponding effect on the US Supreme Court.

The charter has also—and perhaps I should wind up at this point—tended to reinforce the notion that for every social ill there must be a legal solution, there must be a legal remedy. I suggest to you this is profoundly misguided thinking. Political issues, social issues are ultimately and can ultimately only be solved through political and social action, through political and social change. We cannot create the perfect society by creating the perfect Constitution.

So I suppose what I am suggesting to you at bottom is a degree of modesty in constitutional reform. Let us lower our sights a little bit. Let us think about a Constitution that deals with Canadian reality in a Canadian way.

1210

Finally, let me, just before I conclude, penultimately suggest a couple of things which I think could be done with our Constitution. Constitutional lawyers, when looking at the language, the structure, the style of a Constitution, talk about a distinction between what might be called on the one hand, popular Constitutions—people's Constitutions—and on the other hand, lawyers' Constitutions. The existing Constitution of Canada is, pre-eminently, a lawyer's Constitution. It is a series of documents written by lawyers for lawyers. Our Constitution is supremely unintelligible to people who are not lawyers—largely meaningless, profoundly alienating.

One of the things we could do is to attempt to make our Constitution more accessible, more popular, to create a structure which would make it available to people who are not lawyers, to write it in language which is not lawyers' language, but popular language.

I would commend to you, if you have the opportunity, and perhaps the research staff could lay their hands on a copy of this, to look at a very interesting and sound recent Constitution, the 1990 Constitution of the Republic of Namibia. I am not suggesting adopting the Constitution of the Republic of Namibia, but what would be very interesting would be to look at its language, because it was consciously written in a popular style, not in a lawyer's style.

Finally, turning to the charter, I would suggest that rather than broadening the charter, creating more rights, inspiring more litigation, putting more dollars into the hands of lawyers, one might want to see some limits in the charter. I would advocate very strongly an amendment to the charter which said that the rights set out in the charter are enjoyed and can be enjoyed by individual human beings and individual human beings alone. The corporations do not have freedom of religion. Corporations do not have freedom of expression. Corporations were never intended to be afforded these sorts of guarantees.

I would also give serious thought to limiting the notion of standing. "Standing" is a lawyer's term to refer to the ability of persons to raise issues before courts. If I am permitted to raise a constitutional issue before a court, I am said to have the standing to raise that issue. Our courts have created, in my opinion, an absurdly broad notion of standing. Basically, anybody can take any issue to court. If I do not like a law, if I am unhappy about a particular statute, if I think that statute is really not very nice at all, I can take that issue to court. What this means, of course, when in practice anyone can take any issue to court, is that our courts have been transformed from being forums—which is all they are capable of being—for resolving legal issues, into a kind of super-Legislature. But it is very interesting that the way the Supreme Court of Canada operates today is more and more like a legislative committee and less and less like a court. The Supreme Court allows a broad range of people to present their opinions. It allows, as I said, almost anyone who feels like it to raise almost any issue. That is not in a democracy, in my opinion, the proper province of the courts. I would suggest, then, that if the charter is to be changed, it should be changed in the direction of limiting it rather than expanding it.

So my overall prescription is much more modesty and circumspection, less fantasy about the magical abilities of constitutions to create perfect societies, a recollection that this is not the United States. This is a country which does in fact have its own history and traditions and I would think above all a commitment to the democratic process, which means, I would suggest, that in a democracy the crucial political and social issues are resolved through the political process. They are resolved by the people. They are resolved by the elected representatives of the people. They are not resolved, which is the direction we have been moving in more and more, by nine aging lawyers sitting far removed from reality in Ottawa.

I have taken far too much of your time and I appreciate your affording me the opportunity. Thank you.

The Vice-Chair: Thank you very much, Mr Martin, for what I am sure is a presentation that challenged the views and thoughts of many of our committee members. You spoke on issues that certainly as an individual made me think about some of the things I may not agree with, but makes me think about them. With that, there are a number of questions and we will start with Mr White.

Mr White: I was quite fascinated with your description of the 1988 election. It does show a little bit about how the democratic process can be bought and sold, and sometimes the money exchange does not even happen in this country. One of the other comments from the United States you mentioned, from Dr Lipset, I thought was rather fascinating, given the fact that he has made something of a career of studying our country. I am not quite sure what would be the most devastating of those two events in regard to our national identity.

You commented a great deal on the bill of rights, the interpretation of that in court, and the way in which organizations which essentially represent money, capital, organization, structure, physical plant, can achieve standing rights before a court.

It strikes me that all of a sudden we have heard a great deal about social rights, a social charter, and the idea that some of those things, some of that vision we have as a country, should be incorporated. But then, all of a sudden with your description I realize we already have a social charter, but the society that is recognized is a very limited one; it only recognized people who are on boards of directors.

I am wondering if you would see a recognition of basic rights in terms of education, food, housing, such as occurs in Europe, and a sense of variation in terms of standing rights, a recognition of other groups and corporations as being divergent from the kind of limitations you were talking about.

Mr Martin: It would seem to me that through our political process there was a time when indeed we did recognize all those things.

Mr White: There was a time.

Mr Martin: There was a time, and what has been happening in this country is that whether we want to call those rights or whether we want to simply call them social realities, they are being slowly ground away. The basic right of Canadians to a decent education is clearly one which is being ground away. The right of Canadians to health care is

under attack. The right of Canadians to basic social services, the right of Canadians to a decent standard of living, all these are being attacked and they are being attacked primarily through the actions, in my opinion, of large corporations, overwhelmingly American corporations.

1220

I find it one of the interesting paradoxes that one of the major instruments that has been used in mounting this attack on the social rights of Canadians has been the Canadian Charter of Rights and Freedoms. It seems to me, to repeat the point, that one must not imagine that writing these things down in a Constitution guarantees them. The kinds of things that you are talking about, and that I agree with entirely, must be guaranteed, if they are to be guaranteed, through the political process. There was a time that our political process did that.

If I may, very briefly, I think it is worth looking at politics in the United States. I find American politics fascinating. American politics are non-stop; it is a 24-hour-a-day, 12-month-of-the-year circus that continues incessantly. There are always elections; there are always campaigns; there is always a political crisis and a political controversy. It goes on and on. After a while, it seems to me, you begin to realize that politics in the United States are simply another part of the broader entertainment industry. Politics in the United States have very little to do with people's real lives, with the real social agenda in the United States. I suggest to you that the overriding characteristic of American politics is that the social and economic agenda in that country is not set through the political process; it is set in the corporate boardrooms. Politics are just this kind of harmless sideshow that rolls on and on.

One of the things I think used to distinguish this country from the United States is that, to a substantially greater extent, our social and economic agendas were set through our political process. The people set, to a much greater extent, the social and political and economic agenda.

Mr White: I think it is interesting when you mention that, that the sideshow—

The Vice-Chair: Mr White, at this point there are two other questioners and we have only got about 10 minutes left, so I will have to go to Mr Winninger.

Mr Winninger: I will be very brief. We have had this argument in private before and now we are going public. I attended your conference at Western entitled *The Charter of Wrongs*. There is an interesting dichotomy of viewpoints between yourself and Anne Bayefsky, who presented last Tuesday. She suggested that because of the number of provinces that have opted out under section 33 on very vital issues of social and economic rights, it is very important that we entrench these economic and social rights and clarify them in the Charter of Rights, even though we may not provide the same remedies there that we do for individual rights.

Given the history you presented of how elections might be bought, to use Mr White's words, it seems to me we may be in a very precarious position if we rely exclusively on governments to guarantee and deliver those social and economic rights and ignore the value of a more objective

judicial tribunal that will not be motivated entirely by politics, that can look at the individual or collective rights and ensure that they are protected and preserved.

Mr Martin: I go back to the point with which I began: Constitutions are not real things; they are words on pieces of paper. A Constitution cannot do anything by itself. Ultimately, a Constitution only means—can only mean by the nature of the beast—what a group of lawyers decides that it means.

I think this really comes down to a very basic point about constitutions and how we perceive them. Looking at the history of this country, I am far more willing to put my trust in, in this province, 125 elected representatives of the people who are subject to public criticism, who have to stand for election at periodic intervals, who do their business in the full glare of publicity. I would much, much rather take my chances with those 125 people than I would with nine old lawyers sitting in a courtroom in Ottawa who, remember, are not elected, who are not accountable, who are not responsible to anyone. It is a basic principle of our Constitution, remember, that judges are not accountable or responsible to anyone. I would far rather take my chances with the 125 elected representatives who work in this building than I would with those nine old lawyers in Ottawa.

Mr Malkowski: What a very interesting presentation. It is a little different from what we have been hearing all this week. In the title, where you talked about the Constitution, you are saying that we cannot make it a perfect Constitution. You were saying that the corporate entities within the country have used charters themselves actually to get away with making profits. How would you then encourage people to use legislation or, let's say, the law, the process of the judiciary, to approach constitutional amending in terms of gaining their rights? How do people access that when you talk about citizenship? How do people approach that? How can people, given what you have talked about this morning, define their economic and social rights?

Mr Martin: I do not wish to be flippant, but my view of this, to express it succinctly, is that we should take politics out of the courtrooms and put politics back in the streets where they belong. Let me give a concrete example of this.

You will recall that in the early 1980s Prime Minister Trudeau announced that he was going to permit the United States Air Force to test air-launched cruise missiles over Canadian soil. There were many Canadians, including, I am pleased to say, myself, who were not enthusiastic about this decision of Pierre Trudeau's.

A very large, widespread and popular movement in opposition to the testing of US Air Force air-launched cruise missiles over Canadian soil sprang into existence. There were some huge demonstrations in Toronto. There was a demonstration in Toronto in 1983 which was, I believe, up until the demonstrations at the G-7 conference here in 1988, the largest demonstration that ever occurred

in this city, of people expressing their profound opposition to our government allowing the US Air Force to do this. This was the case all across the country. A very large and determined and vocal movement of opposition to the testing of US Air Force cruise missiles developed. It was becoming a serious political challenge to this decision.

This movement, in my view, could have grown and flourished and developed and pressed its opposition. What did it do? It forsook the streets, it forsook politics and decided to go into the courtroom. It decided to take its fight against cruise missiles off the streets and bring it into the courtroom. What was the result of that decision? Operation Dismantle, which was the name of the umbrella organization that was co-ordinating the opposition, lost its judicial challenge to cruise missile testing, as, I would suggest, any first-year law student could have told it that it would. But it lost far more than the courtroom battle. It lost \$150,000 that it ended up paying to lawyers, all its money, and it lost its political energy. It lost its direction. It lost its will.

Rather than putting the energy and the devotion and the political skills of the organization and its members into political work, everything became channelled towards litigation, raising money to pay lawyers. Rather than getting out in the streets and saying, "Why the hell are we allowing the US Air Force to test cruise missiles?" everybody's energy was directed towards raising money to pay lawyers. Of course, the lawyers were paid handsomely. The result was that not only was the litigation a failure, Operation Dismantle evaporated, its energies dissipated, its treasury bankrupt, its members disillusioned.

I feel like weeping when I see, almost daily, some organization in this country announcing that it is giving up politics, it is giving up the struggle and it is going to go to court. I think, not again—a chase after political battles in the courtroom which, I repeat, only ends up benefiting lawyers. My answer is, to repeat, that we guarantee these rights, we fight for these rights in the way that Canadians always did—in the streets, on the shop floor, in the workplace, in the classroom, in the office, not in the courtroom. If I might repeat my simple answer to your question, take politics out of the courtroom and put politics back in the streets where it belongs.

The Vice-Chair: With that, I would like to thank you, Professor Martin, for what was certainly a challenging presentation for most of the members of our committee and those people watching.

That concludes the end of our second week of hearings. We will be returning Monday at 2 o'clock in the afternoon. We will be resuming our hearings at that time. Till then, we stand adjourned. I ask the committee members to wait just one second. We need to deal with a couple pieces of business.

The committee adjourned at 1232.

CONTENTS

Thursday 8 August 1991

Roberta L. Jamieson	C-1287
Black Business and Professional Association	C-1292
Robert Martin	C-1296
Adjournment	C-1302

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

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Le lundi 12 août 1991

Comité spécial sur le rôle de
l'Ontario au sein de
la Confédération



Chair: Tony Silipo
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Président : Tony Silipo
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Table of Contents

Table of Contents for proceedings reported in this issue appears at the back, together with a list of committee members and other members taking part.

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Table des matières

La table des matières des séances rapportées dans ce numéro se trouve à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et des autres députés ayant participé.

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au (416) 325-7400.

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

Monday 12 August 1991

The committee met at 1407 in room 151.

The Vice-Chair: The committee will come to order. We would like to welcome those tuning in to the parliamentary channel for our third week of hearings on Ontario in Confederation. We have lined up this week, as in the first two weeks, a number of witnesses to speak to this committee specifically on issues we have put forward to them to get responses as to where they think Ontario should be going in regard to our role in Confederation.

DENISE RÉAUME

The Vice-Chair: We have with us today Denise Réaume, who is a professor at the faculty of law at the University of Toronto. Just for the benefit of the members, our first presenters were supposed to be here at 2 o'clock, but their plane has been delayed. They should be with us a little bit later, so we switched the order. We will start with Miss Réaume, if you would go ahead.

Miss Réaume: I would like to start by thanking the committee for the opportunity to make this presentation, and to preface my remarks on some of the specific questions asked by the committee on the question of language protections by saying at the outset that I support minority language rights and by telling you a little bit about why.

In my view, the why goes to back to one's vision of Confederation. I look upon Confederation as an agreement between two substantial and thriving communities, an agreement that the members of each of those communities could look forward to a future in which they and their descendants could carry on participating in the cultural community each group had built on this continent up to that time.

That each group would want to carry on its community does not seem to me an unreasonable desire. Indeed, it would have been outrageous if either group had sought to make the other's surrender of its cultural future a condition for its participation in Confederation. I refer to this as an agreement by each to recognize the right of the other to cultural security.

It is to our eternal shame that we did not even consider including the first nations in this agreement, and we have never given much thought to the justice of the easy assumption that later immigrants would want to learn English and French even at the cost of their own mother tongues. But these failures provide no justification for failing to honour the understanding that was achieved in 1867 between the English and French.

As a component of cultural security, the 1867 Constitution sought to foster linguistic security through the institutions that seemed most central to the Victorian legal mind, the courts and the legislatures. Other institutions and services have since come to occupy a more central role in most people's lives. Hence, government services and education were belatedly added to the Constitution in 1982.

The foundation of all of these rights in an undertaking of mutual respect for each other's culture makes their continued protection a matter of justice. Despite this, our history has been replete with attempts by the anglophone community at both the federal and provincial levels to renege on that original agreement. Almost whenever possible, governments have defied the letter of the law. Compliance has usually had to be wrested through whatever threat advantage the government and people of the province of Quebec could muster.

For most of our history, anglophone governments have never even tried to live up to the spirit of the 1867 Constitution. Only since 1969 has this begun to change. The change may turn out to have been too little too late. No one should be surprised, then, at the anger among the Québécois or that many now think they are better off going their own way. One can also understand, even if not condone, why Anglo-Quebeckers are being made to feel the brunt of this anger.

In the context of this version of the Canadian story, I would like to address two of the questions the committee poses on the subject of the roles of English and French. First, in the event of the separation of Quebec, would or should the constitutional position of francophone minorities in the rest of Canada change, and second, are the existing constitutional protections for linguistic minorities adequate?

Let me begin with the scenario of Quebec separation. Most people think this is a straightforward matter of numbers. Without Quebec, francophones constitute 5% of the Canadian population—the same, I might add, as the percentage of the Ontario population. Does it make sense, people then say, to continue providing protections for a mere 5% of the population? This way of formulating the question is usually the prelude to a negative answer. In my view, the question is more complicated.

We must also consider the nature of the protections involved, their meaning for minority communities, the importance of minority communities and the nature of the sacrifice their continuation requires, as well as the history of Canada's settlement that led to the existing numbers.

To begin with the nature of existing protections, some are under federal jurisdiction and some under provincial. Federal protections involve the ability to use either official language in the Legislature, and the federal courts, and their joint use in the enactment of federal laws and the provision of government services.

I can illustrate my first point by reference to the use of either language in the Legislature and of both in legislation. I will then turn to whether provinces should have to continue to provide minority-language education services.

Currently Parliament has in place the machinery to secure the right to a bilingual Legislature. Translation facilities are available both in the House and for Hansard. Government lawyers are trained to draft legislation in both languages. There is no doubt that this machinery is in fact in place

now because of Quebec; that is to say, because the operation of the government would have been politically untenable without it. But given that it exists, given that all the work has been put in to create some machinery, why should we withdraw it just because Quebec separates?

There will still be francophone communities that will benefit from its maintenance. At least parts of New Brunswick and Ontario will continue to send francophone members of Parliament to Ottawa, and one million francophone citizens will still occasionally need to consult the law to govern their affairs and will benefit from being able to follow debates in the House of Commons in their own language.

Translation and bilingual enactment undoubtedly cost something, but before we decide it is too much let us consider the deeper cost to the francophone community of discontinuing them and any countervailing benefits to the community as a whole of maintaining them.

If the chief legal and political institutions of this country operate exclusively in English, that sends out a powerful message. Anyone from the francophone community wanting to pursue a career, for example, in any part of these sectors will have to work exclusively in English and will therefore gear his education and training to that end.

That will undoubtedly exacerbate existing pressures towards assimilation as well as weaken the francophone community by bleeding it of some of its most talented members. Thus the consequence of abandoning these rights is not just that the occasional MP will have to speak English when she or he would have preferred to use French; the viability of the entire community is impaired by making English the language of success.

Second, we must not forget the benefits to the entire community of maintaining our bilingual capacity. We will continue to have to deal with a separate Quebec in trade and other matters. To support the francophone community will help to ensure that we will have a body of qualified people who can comfortably participate in bilateral endeavours in French. Thus Quebec's departure from Canada does not mean it will cease to make sense to promote some degree of French-English bilingualism in the country that remains.

I should add that the same arguments dictate that Ontario not dismantle the extra constitutional protections it has begun to put in place in the last decade.

Next, we should consider whether to continue the provincial obligation to provide minority-language education. It goes without saying that the arguments above are doubly powerful with respect to education, but here there is a further reason for thinking that the withdrawal of Quebec should make no difference.

The existing provisions concerning education already make the entitlement to services hinge on a numbers requirement that is locally, not nationally, determined; that is, one must be able to establish that there are enough eligible students in a particular area to warrant the provision of the requested service.

Since this numbers requirement is locally determined, I can see no reason why the presence or absence of Quebec within Confederation should make any difference to whether the services are provided. If there are enough children in Essex county, for example, to justify

a French-language high school, there remain enough even though their percentage of the Canadian population at large has changed.

These arguments are strengthened, I think, by considering how the 5% came to be 5%. In fact, these numbers are not the result of laissez-faire settlement trends and meaningful free choice. Instead, the level of francophone population outside Quebec has in large part been engineered by a variety of government policies, none of them supportive of community growth.

Two of the most glaring examples concern immigration and education. After Confederation, the federal government deliberately sought out English-speaking immigrants to populate Canada, both for Ontario and to settle the west. Later, the government turned to non-English speakers from other parts of Europe, but continued through a variety of policies to make it easier for a European immigrant to come to Canada and settle in the west than for a Québécois to migrate across his or her own country to do the same, and this at a time when the Québécois were migrating to the United States in search of work because there was not enough in their home province.

Thus the francophone communities outside Quebec are almost completely composed of descendants of communities predating Confederation. No other groups, certainly not the English, can say they have had no supplementation of their numbers since Confederation through immigration practices.

To complement these federal policies, every English-speaking province at one time deliberately sought to discourage if not totally prohibit existing communities from carrying on their language by teaching it through the school system. Who can say what the size of these communities would be now if not for this continued government harassment and the putting up of obstacles in the way of community growth? However, it seems a safe bet that they would constitute much more than 5% of the population.

1420

Under these circumstances, it would be the height of bad faith to abandon the protections these communities have fought long and hard for because minority numbers are not high enough. There may come a day, despite government support, when the population will decline to a level which makes continued support pointless; that is, when the community is not large enough to sustain any meaningful cultural life on its own. Continued government measures in this case would be like life support measures on a person who is brain-dead. But we are not there yet, and we cannot justify killing an existing community now because it may someday die anyway. That would be to ignore utterly the needs and aspirations of the present members of the francophone communities.

Second, there may also come a time, if it is not already here, when other language groups will have attained a size that permits them to sustain a community life in their own language. Such groups may also then be justified in making a claim for government protection.

In considering such claims, we need not, however, be bound by the existing model of language protection. Other groups may have different ideas about how they want their language supported. Its use in the Legislature may not be

as important as other forms of support, for example. Given the settlement patterns of more recent immigrants, it may make more sense to think of language rights at the provincial or even the municipal level rather than the national level. For example, it may make sense to give Chinese some sort of official status in British Columbia, while it may be Ukrainian in Saskatchewan and Italian in Ontario.

Having concluded that the separation of Quebec from Canada should make no difference to the continuation of the existing language protections, let me turn to the question of whether those existing protections are adequate.

While I could suggest improvements to the substance of the existing scheme, in my view the chief weakness of that scheme has to do not with the content of the rights accorded, but with their enforcement or the remedial aspect of the regime. An important feature of the existing regime is that it imposes positive requirements on government. Instead of simply having to forbear from objectionable behaviour, the government must do certain things for people. This sometimes requires the creation of elaborate administrative and institutional structures. Let me illustrate the implications this has for the effective protection of rights by reference to the development of policy concerning minority-language schools in the last decade.

In 1982, section 23 was enacted as part of the charter, according to children who met certain criteria the right to be educated in their mother tongue. What follows is a synopsis of what happened in many provinces in the wake of this new provision. I will not name names here, but this general description was true of many provinces, not, I am happy to say, Ontario.

In many provinces, the government response to section 23 was simply to do nothing, even in provinces that had little or nothing in the way of provision for French-language instruction in place. Time passed while parents gradually realized that in fact the province was doing nothing, and so those parents began to organize and formulate their own demands. A lobbying effort followed and the governments gradually started discussions, halfheartedly in most cases, with these parents' groups. Ultimately, after the passage of considerable time, the government would announce its plan. The scheme announced would be a minimal one, wholly unsatisfactory to the parents.

Finally, having nowhere else to turn, these parents' groups began to initiate litigation to test the extent of the obligations imposed by section 23. The litigation itself took several years to wind its way up to the Supreme Court of Canada. To make matters worse, all along the way the litigants encountered a serious reluctance on the part of the judiciary to get too involved in what the courts thought was the legislative task of designing a school system.

Thus, although having substantially succeeded in their litigation, parents' groups still must return to a policy drawing board that is substantially controlled by the government, a government which has already proven itself, in many of these instances, reluctant to move in the direction the parents want.

Almost 10 years after the enactment of section 23, it has been estimated that only half the children who are eligible for French-language instruction outside the province of Quebec

actually have access to it, 10 years during which a large group of children have been essentially denied their constitutional rights just because it has taken this long, and it is still not over, for the provinces to put in place the machinery that will make those rights meaningful. When you think about it, that is nearly an entire cohort of children moving through the school system. Children who would have been in grade 10 now have had their entire education in English and could have had it in French if the provinces had acted properly.

Thus, the articulation of a right to positive government action without attention to how to compel such action in a timely fashion can be an empty promise. A government unsympathetic to the objective can impose serious obstacles to its achievement and in the process exhaust an already fragile community to the point where it simply ceases to press for its rights.

Some might argue that this means such rights should not be entrenched in the first place. However, if that were true, we should have to repeal several rights already in the Constitution that are taken to be fundamental in our society. For example, the Constitution protects the right to vote. It is easy to see this as a prohibition on barring an eligible voter from the polling booth, for example, and thus as purely negative. However, that ignores the complex web of government action that produces the polling booth itself. Electoral boundaries must be drawn, officials appointed, ballots printed, staff hired, ballots counted. The right to vote does not conjure up in most minds all this activity on the government's part because we are fortunate to live in a state in which it would be unthinkable for a government to try to evade those responsibilities.

But once a minority-language school system is in place, the right to an education might also be reconceived as the merely negative right of a child not to be turned away at the schoolhouse door. Neither of these rights is more positive than the other. The difference between them is that the positive obligations imposed on the government by the right to vote have already been carried out by every jurisdiction in this country and no one would think of challenging them, whereas with respect to the language protection it seems more positive because most of the work remains to be done and there is political resistance to doing it.

In this context, the creation of new positive rights requires attention to their enforcement. The Constitution cannot include a detailed blueprint, a complete design of a school system, for example, but it could include deadlines by which government must take action, create consultative bodies to facilitate minority input into policy formulation or require a review of government proposals either by the courts or by a special constitutional body.

Let me just conclude by summarizing my main two points: First, Quebec separation provides no reason for reducing the protections now enjoyed by francophones. Without Quebec, there will continue to be French-speaking communities that will benefit from them and to whom a historic debt is owed. Their flourishing will in turn enrich the larger community. Second, the main failing of the existing provisions is that their enforcement can be too costly in

money, political energy and time, leaving minority communities still relatively at the mercy of hostile majorities.

Thank you again for your attention and I would be glad to answer any questions you might have.

1430

Mr Malkowski: Your presentation really helped me in terms of understanding language rights. Could you clarify something for me, please? You spoke of recognizing the Chinese language at an official status in BC. What do you mean by that? Do you mean by providing language translation or cultural interpreters?

Miss Réaume: In fact there are many countries, many jurisdictions around the world, where some language other than the majority language is given official status. But what that means varies enormously from one country to another. In Canada what that means at the national level is that French and English can be used in certain forums: in the courts, in the Legislature. You have a right as well to have federal government services provided in your choice of official language, and you have the right to schooling in your language. Those are the protections that we have created in Canada that made sense for our country in 1867 and again in 1982. We give that the label of "official language" status, but there is no magic to those particular provisions. What makes sense, what sort of provisions should be put in place for any particular community, should depend on the needs of that community.

A good example is what happened in Manitoba after the Supreme Court of Canada decided that all the legislation of the province had to be re-enacted in French because it had originally only been enacted in English and that was in violation of Manitoba's responsibilities under the Constitution. What the government did was enter into negotiations with the francophone community to say: "It's going to cost an awful lot of money to re-enact all of that legislation, almost 100 years worth of legislation. Is there a better use we could put that money to that would make more sense for your community, providing a wider range of provincial government services, for example?" Initially the francophone community was much more attracted by the idea of providing provincial services to the Manitoba francophone community in its own language than it was in spending the money on having legislation translated. That deal fell through in the end, but that is an example.

In deciding what to do with respect to the Chinese in British Columbia, for example, we have to go to those people and say: "What kind of support would help you? What kind of support would allow you to maintain your language as a vibrant part of your community?" It might be provincial government services. It might be municipal services, if the Chinese-speaking population is almost exclusively situated in the city of Vancouver, for example. It may not be the same sorts of things.

One thing seems relatively constant, though, and that is education. In my view, it is extremely likely that any group that is going to be seeking some form of protection for its language is going to want to do it in some way or other through the school system.

Mrs Y. O'Neill: Thank you very much for a very enlightening presentation. I talk to francophones quite often, since I represent a riding in and come from the nation's capital, Ottawa. I have worked with francophones very closely since 1972, particularly on the educational issues. In all those cases, I have come to the conclusion, very gradually, mind you, in my case, that it is mandatory that French-language communities have governance of French-language education. I was representing francophone communities and began to realize I was not doing that nearly as well as somebody who would have shared culture and language.

In any case, I speak to francophones very frequently, and I am getting more and more, particularly as they know I am working in this area in the Legislature right now, that they do not feel Bill 8 will protect them if Quebec separates. As late as last Thursday evening, I had a long discussion with a very high-profile leader of the francophone Ontario community. That was his impression.

I find that very difficult, because when I started to see this devolution or evolverment or whatever the term is going to be in the end, and the result will determine which is the best verb, I thought: "Isn't it great that Ontario has had the foresight to put this into legislation? Bill 8 will protect our francophones." Francophones I am speaking to do not share that same sense of security if Quebec separates. I am wondering if you can enlighten me a bit about that.

Miss Réaume: There is likely more than one thing going on. I think one of the fundamental aspects of the Franco-Ontarian psyche that you have to understand is that this is a community which has lived since Confederation in an environment which has largely been hostile to its continued existence. It is only very recently that Ontario began to put in place the range of services, etc., that are now available to the francophone community. Ontario was one of the ones that banned the teaching of French in the schools in 1912. Even after they allowed it again, it was in such a fashion as to make this an impossible vehicle for the actual continuation of the culture. It was, "Okay, you can teach French in the school one morning a week," sort of thing. That is just not sufficient to allow a group to continue its language.

So these are people who have lived in an environment which has been largely hostile to their continued existence. It is not the least bit surprising under those circumstances that they should feel much more insecure than you do about whether the provisions which are now in place, which have no constitutional authority and which could be changed tomorrow if the government changed, are actually going to do the trick.

The other factor goes back to this question about enforcement. It is very easy for a government to frustrate the actual legislative regime that is in place, frustrate it in substance if not actually disobey the law, by simply dragging its heels on any number of levels, by simply making people have to ask and ask and ask to get what they are entitled to under the legislation. Nobody will go on doing that for ever. People will give up in frustration and despair at some point.

It is not enough that there is a law on the books that says you have a right to X, Y or Z. What the francophone community needs to know is that this province is dedicated

in spirit as well as by the letter of the law to actually providing a meaningful range of protections that will support these communities. It is not helped by incidents like making cities unilingually English, for example, or the various English rights groups getting on to the front pages of the newspapers with their anti-French rhetoric. That certainly does not help these people feel they should feel secure about their continued existence.

There is another thing that I think is going on there, though. I do not think there is any doubt in anyone's mind that to survive as 5% of the population—that is the francophone percentage of the Ontario population—in a context in which there is not the same degree of bilateral exchange across the Quebec border that there is now, the same kind of supports, cultural and otherwise, that there are now, is going to be an uphill battle. It may not succeed in the end no matter what degree of government protection is provided.

For example, the many demographers keeping their eye on the long-run predictions will say: "Given the past assimilation rates in Ontario, it is only a matter of time. By the year 2015 or something there will be no more Franco-Ontarians. Therefore, why don't we just stop this nonsense now? They are doomed anyway." Well, it may be that they are. There may be nothing we can do about that. Languages have died out in the past and language groups in a particular area have died out in the past, but the ones that are here now are still very much alive and kicking. Even if the demographers are correct about the predictions for the future, the people who are here now deserve the services they are now being provided with.

1440

Mr Offer: Thank you for your presentation. One of the things that was quite interesting when we were travelling in the winter was that the question was asked of a number of representatives of the francophone community what they felt would be the impact on their rights in the event Quebec separated, or whether they derived any strength from the existence of Quebec in Confederation as we have it now. The answer was no, that they derived their rights, whatever they may be, by the mere fact that they are Ontarians and had been for generations upon generations. I believe that is much in line with what you have been saying. I think that was borne out in terms of the representation we heard, and it is quite interesting how your presentation just flows very naturally from that.

You say, and I have written down some of the comments, that rights are rights but the real issue is the enforcement of those particular rights, and that is the role of governments, be they provincial, federal, municipal or regional. I think we have received a lesson in the whole question of Bill 8, not necessarily over the rights but the obligation in terms of government making certain the general population is informed what it is doing, why it is doing it and how it is doing it. If they fail in that respect, an awful lot of not nice things happen. I am wondering—it is really almost a reaction to an improper message getting out—if you might want to share with us whether you see that as a crucial aspect of the points you are bringing to this committee today.

Miss Réaume: I am sure that it is. What has been done through Bill 8 is to put in place a whole range of services that did not exist in the past, so of course you have to tell people that this is available to them now. Quite frankly, in a lot of francophone communities, the first time people would hear of such a thing, they would probably disbelieve the message bearer, given Ontario's history. "You're telling me that I can go to court and I can speak French to the judge and the judge is going to understand me?" This was unthinkable in times past.

All of a sudden this is not only thinkable but doable. Of course you are going to have to get the message out to the people who can make use of those services, not only that the service is there, but that they really can use it without jeopardizing their situation. For too long in the past, the right to use French in the courts, for example, was a paper-only right in the sense that, sure, if you went to court and started speaking French they would not throw handcuffs on you and drag you out; but the judge, if he or she could understand at all, probably would not be terribly used to this and might be a little bit cranky about having to dredge up that rusty old French from his or her brain or about getting the translator in to translate the whole business. Litigants are not foolish. They know darn well that if they have irritated the judge, chances are things are not going to go their way in the action.

It is not enough to just have these things on paper. What is necessary is to get the message across that these services are finally being willingly provided and are going to be fully available to the community. At the same time, the government has to do what it can to prevent those who are opposed at any cost and on all grounds to the measures in the first place from trying to distort what is being done so as to whip up sentiment in communities that are going to be against anything you do for the francophone minority.

That has been the main problem with Bill 8, all these scaremongers going around saying, "Oh, this means everything is going to be bilingual the day after tomorrow and nobody in this province will be able to get a job at General Motors on the assembly line if he can't speak both French and English." That is just utterly ridiculous. There is no way you can completely control that kind of behaviour on the part of critics, but the government has to do whatever it can to make sure accurate information is out there to counter that kind of scaremongering.

The Vice-Chair: Thank you very much. Do you have any short closing comments at this point?

Miss Réaume: Just that I wish the committee well in its deliberations.

ONTARIO METIS ABORIGINAL ASSOCIATION

The Vice-Chair: Next, our presenters who were supposed to be here finally made it in. I take it their plane was delayed, from what I was told. We have from the Ontario Metis Aboriginal Association the president of that association, Olaf Bjornaa, along with the legislative co-ordinator, Harry Daniels. Perhaps you would come forward, please. I see the clerk has a copy of the brief, which he will distribute among the committee.

Mr Bjornaa: I will let Mr Daniels, our co-ordinator, read out our brief. He can go through it and we will be willing to answer any questions.

The Vice-Chair: You have an hour.

Mr Daniels: First of all, I want to apologize for being tardy in our appearance here, but we do not control Canadian Airlines International. We had our plane break down at the airport in Sault Ste Marie and had to wait for another. Consequently we got here quite late, and we apologize for that, although it is not our fault in the final analysis.

We want to thank you for putting time aside and apologize again for not appearing the last time we were supposed to be here because of a mixup in the communications in our office.

I will read the presentation and we will answer the questions you may have. I do not know what title you gave me, sir, when you came in here, but I am the chief negotiator for OMAA. I heard something different on the way up.

OMAA has appeared before this committee before and made recommendations, but at this time we will present what we feel to be substantive and positive recommendations for changes to the Canadian Constitution. Let me preface my statement by saying that while we harbour a certain degree of optimism in view of recent Supreme Court decisions, we also retain a healthy pessimism for the process. The four constitutional hearings held on aboriginal rights deteriorated into a debate on the effect that they would have on provincial powers. We were faced with a wall of provincial protectionism and intractability.

I see our first vice-president, Henry Wetelainen, has joined us.

The recent signing of the statement of political relationships between the Ontario government and the chiefs in assembly is but another step in the right direction, and may be the beacon that leads the way to a more positive relationship between the aboriginal people and Canada.

In response to your memorandum of July 3, 1991, inviting OMAA to make a presentation, we will deal with section 5 in the order that items are presented.

Self-government: The right to self-government should be included in the Constitution of Canada by a simple resolution stating that the aboriginal people of Canada have the right to self-government. In order to better understand self-government, another approach would be to include the right to education, culture, language, land, natural resources, hunting, fishing and trapping, and guaranteed representation in all legislatures, to name a few. Perhaps this would add a new perspective which would allow government and Canadians to understand that to exercise these rights, the aboriginal people must practise self-government.

A formula could be developed whereby:

1. The federal government would retain exclusive authority in certain matters;
2. The province would retain exclusive authority in certain matters, in keeping with the Constitution;
3. The aboriginal people would assume certain powers and share others in bilateral and trilateral arrangements with the federal and provincial governments; and

4. The exclusivity and sharing of powers would be determined through negotiation.

Inserting the rights of aboriginal people in the Constitution would be the easy part. The methodology of implementation and transference of powers would prove to be the hardest mountain to climb.

Constitutional responsibility—"Indians and lands reserved for the Indians": There should be a substantive change to class 24 of section 91 of the British North America Act, 1867. This now is inconsistent with section 35 of the Constitution Act, 1982, which states that the aboriginal people of Canada are the Indians, Inuit and Metis. As it sits, 91(24) is archaic, exclusionary and selective in the treatment of aboriginal people. It adheres to the old British imperial notion that they will decide who the aboriginal people of Canada will be.

The weight of evidence over the years suggests that by a process both of omission and commission, the federal government has tended to erode and reduce its responsibilities to native peoples. The effect has been to fragment a people originally recognized in the Constitution collectively as "Indian" into registered Indians, urban Indians, non-status Indians, Inuit, Metis, treaty Indians, non-treaty Indians, etc, ad nauseam.

One result of this legal administrative dispersal of the native people has been to create hopelessly confused jurisdictional tangles to deprive aboriginal people of their land, resources and badly needed services, and to dilute their sense of identity and community. This process has also served the purpose of decreasing the number of people who are recognized by the federal government as having special status. We believe the Constitution confers special status on the Metis, along with its associated benefits and rights. This fact is well established in history.

1450

Our recommendation is to delete the words "Indians and lands reserved for the Indians" in class 24 of section 91 and substitute the words "Aboriginal people of Canada and lands reserved and to be reserved for the aboriginal peoples of Canada." This change is non-threatening to anyone and effectively puts the responsibility for all aboriginal people with the federal government. The provision of service would be determined through negotiations, through equalization payments and lateral transfers of funding and resources to the aboriginal people.

Three founding nations: What do we really mean by unity in Canada? It must centre around a strong sense of national identity, of course, but an identity which has respect for and embraces all cultures. This is impossible if we insist on maintaining the delusion that there were only two founding cultures in Canada. What happens then to the culturally vibrant and linguistically diverse groups that have existed here from time immemorial? With 56 aboriginal languages in Canada, how can we be focused only on bilingualism? In the face of historic reality, only the most hardened elitist could write off aboriginal cultures as having made no contribution to Canadian life. Can we possibly accept this elitist attitude and still seriously expect to develop, foster and preserve Canadian unity? It hardly seems possible.

Another fundamental omission in the constitutional amendments is some tangible recognition that aboriginal people were the original inhabitants of this country, and that from the start they played a vital and indispensable role in founding and shaping its development. Absent-minded and passing references to this fact in brochures are patronizing and do not constitute real recognition. A few examples picked out of a historical continuum will illustrate that Canada today might have a very different geographic configuration—if indeed it would have existed at all—had it not been for the crucial role played by its native people.

People of Indian origin originally held title and enjoyed the rights of use and possession over the total area of what is now called Canada. This fact was recognized from an aboriginal perspective by the Royal Proclamation of 1763, which in turn provided the basis for subsequent treaties and other means of extinguishing aboriginal land title. This process was not accomplished entirely without conflict, but the conflict was minimal compared to the costly wars of extermination which were fought in the United States of America. The aboriginal people in Canada, for the most part, co-operated peacefully as allies and partners in the business of founding a nation, and expected in return that promises which had to do with their lands and cultural and economic survival would be kept. It is still not too late to honour these promises.

As allies, aboriginal nations also played a central role in historical events leading to the formation of Canada. After capitulation, Quebec was regarded as a British Franco-Indian province in deference to the major groups shaping its destiny. During the wars with the United States, Indian forces held the balance of power in Canada and had a critical part to play in protecting their country's borders from persistent encroachments from the south.

The Metis of the northwest formed the first provisional government under Louis Riel in 1869 and laid the foundation for the creation of Manitoba and its subsequent entry into Confederation. It was the Metis who insisted on federation with Canada and resisted American annexation policies. Two Metis wars of resistance were fought to protect their land rights and to gain such other democratic freedoms as representation in Parliament, language rights for both French and English, etc. The Manitoba Act was a negotiated response to the demands of Riel's provisional government and a condition of its dissolution.

In short, we are saying the rights of indigenous peoples must be protected by the Constitution. The inclusion of the aboriginal people as members of the founding nations of Canada can either appear in a preamble or a Canada clause, whichever is the strongest and most enforceable.

The word "existing" in subsection 35(1) has proven to be a major stumbling block in constitutional talks with aboriginal people. The removal of the word "existing" would clear the way for enshrining aboriginal rights in the Constitution. Those rights we outlined earlier.

In order to ensure that section 35, as it exists, protects and guarantees the rights of aboriginal people, any amendment to the Constitution directly affecting the aboriginal people must be subject to a consent clause. Section 35 must include a clause or section that would ensure that the

aboriginal people attend a constitutional conference on any subject which may have an effect on them. There must be commitment to the aboriginal people and steps taken to enforce section 35 by way of amendments on commitment and enforcement, instructing governments of their responsibility and trust.

The Constitution should guarantee native representation in the House of Commons in proportion to their numbers after an accurate enumeration of the population by the decennial census. Until an accurate census is completed, about 5% to 10% of seats in the House of Commons should be reserved for native peoples with due consideration for Atlantic and northern Canada. A separate native electoral roll should be compiled and those entitled to register under this roll must meet normal electoral qualifications, such as age, citizenship and residency, and also identify as an Indian, Inuit or Metis.

Native people should have the choice of opting for registration on either the general electoral roll or the native electoral roll or for both. Native electoral constituencies should be established across Canada and the number of native seats should be redistributed at the time of general redistribution after the decennial census, by a separate electoral boundary commission.

A voting system—for example, list system or preferential system—should be worked out by negotiation between representatives of the native peoples and the government of Canada. Similar constitutional guarantees for native representation in provincial legislatures and territorial assemblies should be made. The Constitution should guarantee the appointment of native peoples to the Senate in proportion to their numbers.

While we are not from the Yukon or Northwest Territories, we think that political and constitutional development in the Yukon and Northwest Territories should proceed towards provincehood. The claims of the aboriginal people must be satisfied before this process is completed, to ensure that the land grab that happened in the south is not repeated in the north. It may at this time be too late. The development of their governments must reflect the distinctiveness of the aboriginal peoples and be structured to ensure their rights are guaranteed and protected for all time.

All aboriginal languages must be recognized in the Constitution. That is not to say they become the official languages of Canada. It simply means that the Constitution should recognize the aboriginal culture and heritage as an integral part of the national culture. While it is now happening on a small scale, it would serve as an impetus for the education authorities in the provinces and territories to promote the study and retention of aboriginal history, language and culture in the school system.

Unless the aboriginal people and territorial governments are equal partners in Confederation, they will remain as invited guests and witnesses at first ministers' meetings. The aspirations of the aboriginal people must become a priority of the constitutional process, rather than a necessary evil. Going through the motions of constitutional talks on national television can only be characterized as storefront politics. We let the world see the process, and when it fails throw up our hands and say, "Well, we tried."

There is unfinished business. The constitutional talks on aboriginal rights got bogged down for four years on the issue of self-government, ignoring the fact that the 1983 accord on aboriginal rights, which is appended for your information, set an agenda of five items with sub-items. It was agreed that certain amendments to the Constitution Act would be sought in accordance with section 38 of that act. It is time to resurrect the agenda and do what is doable in order that progress be made in the constitutional process and the enshrinement of aboriginal rights.

In conclusion, we believe that Canadian identity must be rooted in its aboriginal heritage. The successive governments have not seen fit to recognize a Canadian identity and culture which is rooted in the land. There has always been the élitist notion through the years that has emerged as "deux nations," and more recently a "distinct society". Who is more distinct than we are? This is the home of our ancestors. During the Meech Lake debate there was a huge emphasis on immigration. This led us to believe that Canada is ruled by separate governments of immigrants catering to immigrants. We are not denying anyone a place to live. What we are stating is that our rights are paramount and must be treated as such. Canada can no longer escape the fact that aboriginal nationalism is Canadian nationalism.

1500

Mrs Marland: Mr Daniels, this is a very powerful presentation. I am going to enjoy rereading it and studying it in depth. You have presented to the committee a number of very important statements which I will consider very seriously. I wanted to ask if you might elaborate for us how you see the guaranteed representation working in all parliaments and legislatures. I was trying to follow you as you quickly read this and I have not seen this presentation in this detail before. Are you in fact suggesting that there would be an electoral roll for aboriginal people across the nation who would elect their own representatives in Ottawa?

Mr Daniels: Yes.

Mrs Marland: So the constituency then for the aboriginal people would be the nation, or would you see it broken up geographically?

Mr Daniels: Certainly, because there are different peoples in this country. We have 56 different languages. We have about seven linguistic groups. We have territorial differences and cultural differences. We are not a homogeneous society. Because we are all brown, we just do not stick around. We are different. We live across the river from Chippewayans and do not even understand their language, but the Crees do, and so on, with the Blackfoots on one side and the Beaver Indians over here. We are not the same people at all.

Mrs Marland: No, I understand that.

Mr Daniels: There has to be something to reflect that. In New Zealand, they have four seats guaranteed in the New Zealand House and the aboriginal people themselves vote for those people who get to enter the House.

Mrs Marland: You have described the people who would be on this electoral roll as being very diverse in language and cultural background. How would you see

that working? If you take a number, any number, that would be guaranteed, how would those people be elected by a constituency at large across the nation? Second, if there were to be guaranteed representation in provincial legislatures, how could that be facilitated? How would that work? Would we again have all the aboriginal people on an election roll for a province and each of them allowed to vote for X number of candidates representing all of them?

Mr Daniels: Let's take you back to the basics. We are the first citizens of this country and if we are not guaranteed in any House, or all houses, that our people are going to fight for us, then all we are doing is catering to the wants and needs of a central government. I am not being racist about this when I say this. How can I trust some white person who has no identity with me or my people to protect my rights in the House of Commons? Because we are deemed to be, at this point in history, a conquered people, owed certain rights that are being put in the Constitution, there has to be a protection for us. We have to have our own representation. I do not know what the final formula would be, Mrs Marland. I have no idea. We are offering suggestions.

Mrs Marland: I am not questioning what it is you want. I am simply asking you to help us as to how to consider that as a possibility. If we are going to say that aboriginal people should be guaranteed seats, I think we also have to be able to say who is going to elect them and how they in turn will represent this diverse nation of aboriginal peoples you have so clearly described.

Mr Wetelainen: I think we have spent well over 20 years developing political organizations, in this province and across this country, that have a constituency base and that have numbers with those organizations. It would be settling down to some types of negotiations, such as with the Nishnawbe-Aski, who have an identifiable area, a constituency base and who have developed a mechanism, how they service their people. AIAI, the Association of Iroquois and Allied Indians, has the same thing. OMAA has the same thing. A number of organizations spent 20 years developing these institutions. I think it would be natural to start to negotiate with those institutions on a formula by which they would elect representatives to the House.

Mrs Marland: You would see that being broken down on a provincial level as well?

Mr Wetelainen: I think it would be a fairly easy argument because we have already developed this over time. It has already been settled. We have different organizations belonging to different groups and through that they have elected the grand chief of Ontario, and Olaf is elected through our zone corporations and our local communities. This has been done.

Mrs Marland: Mr Daniels, you mentioned New Zealand or Australia.

Mr Daniels: New Zealand.

Mrs Marland: That has guaranteed representation. Are there other countries in the world that have a British parliamentary system that also do that?

Mr Daniels: The state of Maine has a guaranteed seat for the Penobscot Indians. I think it is one seat; I am not sure. Do not quote me on that one, but I know there is guaranteed representation in the state of Maine.

Mrs Marland: But the only other country in the world is New Zealand?

Mr Daniels: To my knowledge, yes. They are talking about it in Sweden. They are talking about it for the Saame people, better known as—what do they call them? I have forgotten; they have been known as the Saame for so long now—Laplanders.

Ms Carter: First of all, I would like to express a great deal of sympathy with regard to your position. I think it is great that we are beginning to recognize aboriginal people more and more and to acknowledge the fact that your culture and your view of the world has a great deal to offer to the rest of us. I might even say that I think we rely on you partly to help protect us from ourselves when it comes to devastating the environment and some of the ways we behave. I am also glad there has recently been acknowledgement by churches and other groups of the abuse native people have suffered in the past, that we have admitted things have happened that should not have happened and that we are trying to take a better direction in the future.

Quite a large number of aboriginal people in Canada do not live on reserves or in identifiable groups, but live in the towns and cities and are just, as it were, mixed in with everybody else. I am wondering how those people would be included in the kind of structure you are suggesting. Also, as the generations continue, at what point does somebody cease to be an aboriginal where one gets into marriage?

Mr Daniels: We will decide that.

Ms Carter: I see. Is that your answer to that whole question?

Mr Daniels: No, but at the end, there, that gets me every time. When do you cease? It is almost like you want that whole thing. The Indians are going to disappear and if you keep mixing your blood, you are going to disappear all of a sudden. Who decides that? When and how? Is there a blood quantum you take? My blood boils. I apologize for responding so quickly, but we will decide. It is our right to decide who our people are. If we have that much blood, we want to decide who will be that Indian or Metis.

Ms Carter: I know there has been some internal controversy as regards Metis women who married non-native men and so on.

Mr Daniels: I think Henry would have the answer to that.

1510

Mr Wetelainen: You related to a question about the urban native people. Believe it or not, we have a good handle on who they are and where they come from. The organizations that have been around a long time know each other fairly well. We usually can trace ourselves back either to the treaty we have signed, or if not, to the groups our ancestors have come from. The city of Toronto has

40,000 native people, the statistics are supposed to say. I think that enumeration could be carried out fairly accurately and I think we could probably elect a leadership or a member from that area to represent those people.

I do not think that would be a task beyond our capabilities. I think that would be a fairly simple process, and using the organizations that have existed for a long time, service the needs of those people.

Mr Bjornaa: When I come to Toronto and turn the television on, they say, "This is a Chinese or Japanese area," and I can go on down the line. I think you have already identified what areas and urban areas there are natives in. Turn the television on and it tells you whatever race of people there is. You have told us this for years.

Mrs Y. O'Neill: As usual, it is a very challenging brief. I always say that is what I am going to hear when I am at one of your presentations. I have spent a bit of time this summer in Nova Scotia and in New Brunswick, and you will likely know there is a lot of talk about guaranteed representation in those two provinces at the present time. It does seem to be gaining quite a bit of popular support. I feel the talks are progressing quite well. From what you have said today, I gather you have worked out some of the necessary logistics, which I am very pleased about, because I had not heard those before from any group. I hope this will continue to be one of your inputs to these talks and that this is a possibility. It should be looked at. It certainly is one part of a solution.

We are having parallel talks or parallel constituent assemblies, or whatever is being talked about with the national Assembly of First Nations. As a Metis, are you involved at all in that process or will your process with the federal government and indeed even with ourselves be somewhat parallel to that whole exercise as well?

Mr Daniels: Are you talking nationally?

Mrs Y. O'Neill: Yes, I am talking nationally at the moment. I know Mr Clark met with the Metis in at least Manitoba. I do not know whether any of you were there.

Mr Daniels: No, that was the Metis National Council. Right now the Ontario Metis and Aboriginal Association is not affiliated with any national organization. We made representations to Mr Clark to try to get us into the process. We are in the process of answering them. As it is structured right now, we are not affiliated with any national organization, so we are taking steps to see if we can rectify that.

Mrs Y. O'Neill: But you certainly have had a continuing relationship with our government.

Mr Daniels: Yes.

Mrs Y. O'Neill: Then you are asking today, although it is not mentioned specifically in your brief, that this be considered, that guaranteed representation would be part of the Ontario Legislature as well as the national Parliament. You have said that?

Mr Daniels: Certainly this is not a new trail we are walking down. The Native Council of Canada proposed it on August 19, 1979, to the federal government. At that point in time, this organization was a member of the NCC. That position has not changed at any time. We have been

talking about this for years, prior to that, but we just formalized it in 1979.

Mrs Y. O'Neill: Are you in touch with those who are studying this in the Maritimes then, in particular the Micmacs in Nova Scotia? Have you had some kind of communication with those people this summer?

Mr Wetelainen: No, we did not.

Mrs Y. O'Neill: It might be useful for you just to see how they are making out there. As I say, it does seem to be getting quite a high profile. I do not think it is a total answer, but it is certainly part of an answer, I feel, and certainly a way in which you can have regular contact with the existing government.

Mr Wetelainen: We also think it should take some type of steps. We made presentations earlier on, a number of years ago, that we would want representation even at the assistant deputy minister level, at those types of committees, sitting on that. We have made representation to this government, with the memorandum of understanding that recently was almost signed, asking for representation on their special committee of ADMs and to this date we have been refused. You are telling us on the one hand that you want to talk to us and you sign an MOU, and on the other hand then you will not commit your ADMs to meeting with us. The federal government has already done that. We figure there is going to be long ways of talk yet. Sometimes you have to start the process and we find that—

Mrs Y. O'Neill: It might be easier to be part of the political scene than of the bureaucratic scene. At least, it has been easier for me; let's put it that way. Anyway, thank you very much for trying to help us understand how this may happen, because as you say, I think there has been a lot of talk and this is not new. I think the logistics of it, the complexities of it, have made some of us who would have to implement it more hesitant. But you certainly have given us today, with the existing structure and the process that can evolve from that, some very good ideas of how this could happen.

Mr Winninger: I know the minister has met with OMAA on more than one occasion when I have been present to discuss some of the issues, even if you do not feel you have sufficient input at the ADM level.

I just wanted to explore with you the implications of a couple of your recommendations. I have always found the concept of guaranteed representation to be a compelling one, and yet when Gord Peters, speaking for the Chiefs of Ontario the week before last was put the idea, he suggested it would be meaningless because the native bloc would be outvoted every time. I wonder if you can respond to that.

Mr Daniels: Our notion back in the 1970s was that a voice is better than no voice at all, as long as it is aboriginal voices talking from the heart and they know whom they are talking for. Whether it is Warren Allmand getting up or whether it is Svend Robinson or Jean Chrétien, still you do not have an aboriginal person talking on aboriginal rights or issues. We welcome anybody saying, "Don't stop," those of you who do that, but it is just that. Why?

Certainly they would be outvoted. Only a fool would think they would not be. However, when the issue comes

up and they get to speak, then you have an aboriginal person talking from an aboriginal perspective rather than someone saying, "I think I know," like anybody. I am not going to throw names around here, but I know them all. Everybody seems to think they know. When you hear them talk, they have the idea and it is almost right but it is not quite right for me sometimes. It is just the fact that we like to have some people there to speak for us.

Mr Winninger: The alternative might be the parallel process Mrs O'Neill referred to earlier, where you have your own legislative body set up in each province to parallel ours. The suggestion might be that you would have more influence were you to set up a parallel form of government rather than participate as a small minority in our own government.

Mr Wetelainen: I do not think this country can afford any more levels of government than it already has. I think we have a hard enough time competing in the North American economy than to set up a parallel bureaucracy and start to slice the resources thinner than they are today.

When we talked about being part of this government, we also wanted to make sure we had the direct linkages to the bureaucracy and that was what we referred to. When OMAA is pursuing on this, when we sign MOUs with this government, we have a plan in our minds where we are going with this type of process and what we want to develop. We see that you have to be able to get direct linkages to the bureaucracy. You have to know the stats and what each department is spending. Those types of things are crucial in the development of our people.

Mr Winninger: You suggested that there be a consent clause so that any amendments to the Constitution that would directly affect the rights of aboriginal people could be vetoed. The question that comes to my mind is, are we talking about a simple majority or an enhanced majority of aboriginal people in order to declare a veto, or would it be one of consensus?

Mr Daniels: We would have to meet as aboriginal people, much the same as you meet in the House, to discuss the issue and find out where the commonalities are and what kinds of things affect us. I think the people affected would have to do it. If it is Indian people, then the Indians would have to do it; if it is the Metis, then the Metis; if it is the Inuit, then the Inuit. That would be a form that would have to be developed, like I said. We all sit at one end of the table as an Inuit, an Indian and a Metis, and just because we are all brown does not mean we all think alike. The Inuit certainly have much-different wants and needs than we have on the Prairies, and the east coast Indians have just as many different wants and needs and different relationships with the land and the water, although similar to the BC Indians.

We are developing something here that is scary, if you want to talk about it. If I can just make one statement, including aboriginal rights in the Constitution does not necessarily mean that we will ever get to exercise them. In the American Constitution you have freedom of speech, but try to exercise it.

1520

It is the implementation of rights that is the tough thing. People get the process all mixed up, "We're going to put all these rights in the Constitution, and that's very scary, children," like that guy on TV. It is not that scary. The scary part is trying to get together with the government so we can implement it. How are we going to get the transfer of funds? How are we going to get equalization payments? How are we going to get the resources? How is the land going to get to us? That is the scary part.

The easy part is putting the stuff in the Constitution. If the government of the day in this province and the government at the federal level are really concerned and really want to do something properly, put the rights in the Constitution. We have told how many prime ministers, about four or five now, and how many premiers, before Bill Davis and after Bill Davis, including Bob Rae, that the easy part of this whole process—I am just repeating myself here, maybe for my own benefit, because I think I am getting an echo here—is putting the rights in the Constitution. That is the easy part of the process. The implementation will kill you. It will drive us crazy for hundreds of years. So we will be in bed together for years after that happens.

Mr Curling: I just want to take you and myself into the time when you have your 5% representation in the House. Having the representation there in Parliament, do you see that all the parliamentary processes set out would have to be changed dramatically? Say there are 100 people in Parliament and you have your 5% there and the parliamentary committees are set up where the real change is going to come about. As you said, it is the image of the native people; it will be the aboriginal people represented. How would they effect those changes if you have the same process that is happening? Ten or eight parliamentary committees are there. How would they then be spread around in order to make those different changes in policies?

Mr Daniels: We will be pretty busy going to committees, I would imagine. I do not know. We have not thought that far in advance, but I think Saskatchewan would be way ahead of the game. If we had a formula whereby, as your population grew, as aboriginal people you would get more representation. In the year 2000 you would be half the House in the province because we are the fastest-growing population in Canada right now, the Metis and Indian people in that province. So we would be guaranteed to have more people on committees. I am not being frivolous. I think basically what we want is a voice and someone to watchdog for us what is going on. Committees: I do not know, Mr Curling. I have no idea. We did not think about committees when we—

Mr Curling: The only point I am trying to make is that you said it right. It is nice to put the lines in the Constitution. As a matter of fact, it is nice to be invited to dinner. The fact is that you are then told what to eat and what not to eat and where you can sit.

Mr Daniels: That is right.

Mr Curling: The fact is that having got there, you want to participate fully in the entire meal and one should not say that some can eat this and some can eat the other.

Today we are making changes about Sunday shopping that could affect the aboriginal people, and if that committee is sitting there and you are not there, it is quite possible that one has to look at the whole structure of how it is done to make sure that when the budget is being debated, your role is being played, that your special section is in Parliament, which will give them that right to speak on all issues and all policy changes or any legislation changes that will come about. I am just concerned that we have to look beyond that, but I think you are right: first get in that door, but make sure to say the things that have to change, so that your representation will be effective. As you were about to say, at home when they must talk the talk, they must also be walking the walk.

Mr Malkowski: It was a very impressive presentation. I know the native people have their own internal structure, but when it comes to talking about constitutional process, from our entire experience with Meech Lake, when the native people were not included and were left out, how could we avoid that situation again when it comes to provinces and the first ministers' meeting? You are asking for representation at those talks so we do not have a repeat of Meech Lake, but we also need to have representation from the Northwest Territories and the Yukon as well.

I am wondering what kind of formula you would have, like equal participation from the different groups so that you do not have one group heavily represented and then other groups of native people from other parts of the country not being represented. You mentioned having 56 languages across the country. How do you then determine equalization? What kind of advice can you give to us to make sure that all peoples are equally represented so we do not repeat the mistakes of Meech Lake?

Mr Daniels: Meech Lake was almost like a knee-jerk reaction, and I think that mistake lies in the hands of the people who did it. Brian Mulroney has to take his lumps for that one. He wanted the "distinct society" in and he was willing to sell anything for it. Meech Lake is not our mistake, Mr Malkowski; it is a mistake of the government.

We have to be equal partners in Confederation. Section 35 states that the aboriginal peoples of Canada, our Indians, Inuit and Metis population, are peoples with definite populations. So we would have to have three representations from our people. The territories certainly have to be represented. I think there has to be a sense of real purpose here. Is the government really intent upon building a Canada that reflects all of its attributes, or is it just trying to nurture this old notion of deux nations, two founding nations, and "distinct society", and retain that elitist attitude that there are only French and English in this country who are builders of Confederation? That is the mistake. The mistake is rooted in history; it is not rooted in Meech Lake.

Mr Malkowski: You mentioned the three groups. Can you mention again for me what they were?

Mr Daniels: The Indians, Inuit and Metis.

1530

Mr Offer: In your presentation you have spoken about a number of different issues. On page 2 the first point you bring forward is that aboriginal people have the right to

self-government and that it should be included in the Constitution of Canada. As you know, there are a number of other discussions ongoing dealing with the question of possible division of powers or a realignment of powers between the federal and provincial governments. We have that type of discussion which is ongoing on the one hand, and we have the issues you have brought forward to this committee on potentially another hand. Is it your position that the points you bring forward today are ones which should be dealt with and decided at the same time, prior to, or after the issues concerning the division and realignment of powers between the federal and provincial governments?

Mr Daniels: If during their division of powers they are carving the country up even further, then I would suggest that our rights have to be paramount and dealt with first. Mr Malkowski talked about a mistake of Meech Lake that we made. It is a historical mistake, and let's correct the historical mistake. We are the first citizens in this country and have to be dealt with as such. If you are going to divide and carve this country up any more, let us be part of that. If we are going to carve the turkey, we want to hold the knife now and again. Let me put it that way.

Mr Offer: I think, Mr Chair, that it is crucially important that when we hear presentations such as the one before us dealing with a variety of issues, this committee be very aware as to not only the substance of the presentation but also, from your perspective of course, how and when you want these particular issues to be addressed. I think it is crucially important that this committee be sensitive to that aspect of any presentation that comes before a committee.

The Acting Chair (Mr Winninger): A point well taken, Mr Offer.

Mrs Marland: I really wish we had three hours to discuss this presentation this afternoon. I have two questions. I will try to be as fast as I can. Mr Daniels, I think you said the easy part is making the changes in the Constitution. The agreement that was signed last week with the Ontario Premier was described as a landmark agreement. According to a newspaper account I am reading by Paula Todd in the Toronto Star, it goes on to say that Premier Rae cautioned that the document does not immediately give natives more power, and is a critical quote accorded to Premier Rae is: "I think what we're doing is now trying to define exactly what powers are involved and how they will work out...that obviously depends, partly, on the broader constitutional discussion that's going to be taking place over this year and in years to come."

I read that from the Ontario Premier and I also read a criticism by another colleague in opposition, not in our party but in the Liberal Party, who says really that this is just a political document, a piece of paper, etc. What is your reaction when you read the Premier, who on the one hand has signed this landmark agreement and then in the same breath is saying, "Well, of course, it really depends on what happens on the broader constitutional scene this year and in years to come"? Does that weaken the intent of the New Democratic government in Ontario today, which has made such a hoopla of what strides it is supposedly

taking towards our native people, as they are referred to in this document?

Mr Daniels: I do not see that it is just rife with a plethora of platitudes. It is well intended, but I think Henry has a statement there he will want to make. It is subject to a lot of things. Of course it is. But it is a step in the right direction. As we indicated—if I may, Henry, for a moment—at the opening of our statement, it may be the beacon that leads the way down the road to real change. It shows that this government is concerned. It shows that this government is taking leadership and is assuming responsibility for some of the rights that the federal government should be assuming. It says in there those kinds of things. But it is—

Mrs Marland: But you are excluded anyway.

Mr Daniels: Well, of course, from this we are. But in the same context that we talked about class 24 of section 91 of the 1867 act being changed, which is racist and exclusionary and elitist and archaic, in keeping with what Mr Rae is doing with the Indians, he must also sign, has to sign the same document with the Metis people or else he is no better than the British imperialist government which came here, passed the British North America Act and said, "This little bunch is Indians, this is not, and you aren't," and so on and so forth.

Mrs Marland: Has he talked to you? Has he talked to you about signing the same document with you?

Mr Daniels: Talk to my leader.

Mr Wetelainen: I guess that is the challenge today. I think that document should be signed with the Metis.

Mrs Marland: Has Premier Rae or have his representatives talked to the Metis?

Mr Wetelainen: No, not on that document.

Mrs Marland: Have you sought an opportunity to discuss it with him or his representatives?

Mr Wetelainen: We have made representation that we want to be included in those types of discussions, and that type of document should be signed with the Metis of this province. There are people within our organization who think it was signed with the first nations because it was cheap publicity. The elected delegation of our organization figures there has to be constructive discussion with the leadership of the organization. Our people are getting restless. They are starting to block roads. They want to see some constructive changes.

Mrs Marland: What has been the response to your request to meet with the Premier or his representative?

Mr Wetelainen: We have not met with the Premier of this province yet.

Mrs Marland: You have asked for meetings?

Mr Bjornaa: Yes, we have asked them to attend our assembly. We have asked for meetings and we are going to again, for meetings with him.

Mrs Marland: But he has not attended yet.

Mr Bjornaa: No.

Mrs Marland: Okay. My second question, and I will be brief: On page 5 you make a very profound statement, "With 56 aboriginal languages in Canada, how can we be

focused only on bilingualism?" Would you like to comment a little more on that?

Mr Daniels: To answer my own question, no. How can we? It is just that we should not be. The French in the audience here are going to be mad at me for this one. The English won the war, it seems to me, somewhere along the line. They settled their dispute with the French on the Plains of Abraham. They conceded, "We will put French into the Constitution," but now they want to speak French all over the country.

Because these two peoples fought, they forgot their Indian allies, like the Iroquois, the Ojibway down here, and the Ottawa Indians, the Senecas, the Oneidas, and so on and so forth. When they came west they forgot they had the Metis as allies. So why focus very narrowly?

Let's talk geographically about Canada as it exists today. How did it develop historically? It developed because of the English, the French and the Indian, Metis and Inuit people—the Indians as allies in the east mostly, the Metis for bringing the west into Confederation and the Inuit for maintaining sovereignty in the north.

Why did they move them way up to the islands during the 1950s? Because they wanted to maintain more sovereignty, because they counted the Inuit all those years as their people, which gave them the right to claim the north. Nobody else wanted to live there but a few RCMP and a postmaster. It was the Inuit who maintained sovereignty. Service industry people were there just to service them and just a few white people who would go there. Why focus ourselves very narrowly on what happened in Canada?

We also stated in here, Mrs Marland, that we do not want all our languages to be the official languages of this country, but maybe the official languages of our ancestral territories. What is wrong with that? Or do we want to maintain this racist and elitist notion that only the white people have rights in this country? That is what we are challenging you people with.

Mr Wetelainen: I think there is only one woman who speaks one of those 56 languages. One language could be dead the minute she dies.

Interjection: I think she died.

Mr Wetelainen: If we only had one buffalo in this country, all around this country they would be screaming to save that buffalo.

Mrs Marland: Yes.

Mr Wetelainen: But part of our heritage is dying and nobody is listening, nobody is responsive. What they do in Ottawa is cut the budget on native language retention. What do we do in our school system across Ontario? We fight the school boards to get native languages included. Yet, as I said, if a species were dying, we would all be screaming. In fact, that is what has happened.

Mrs Marland: Are your languages not included in the Ontario school system, as other native languages are?

Mr Wetelainen: Yes, they are.

Mr Malkowski: I think the member is dominating the question period.

Mrs Marland: Oh, oh.

The Acting Chair: We have until 3:45 for this particular presentation. I believe that was a wrap-up to the answer to Mrs Marland's question. Since there are no further questions, and our time is almost up—

Mrs Marland: I think he was about to answer the question about native languages in Ontario.

The Acting Chair: Sorry. Did I cut you off?

Mr Wetelainen: No, I was just saying that it is difficult sometimes. It is supposed to be the language in whatever area the school board services. As long as we have 12 students we can get that language as part of the program. It is usually the quality of the education that is in question, that type of thing.

Mr Bjornaa: I would like to add just one other thing before we wrap up. I do not know why government is scared to see us in the Constitution. We are here to better our people and better ourselves. Why should government—the Ontario government or any government—be scared of native people bettering our lives, bettering Canada? They should be the first ones to open the doors and say, "I'm glad native people came here to better Canada, and better Ontario."

But it seems we come here as a group, we talk about our education, we talk about everything down the line—everything. We have been here time and time again, and we are not going to go away. We are going to keep coming back, because we have no place to go. This is our homeland. Government should never be scared of us bettering our people and bettering ourselves, because we are bettering Canada.

The Acting Chair: I would like to thank you all for coming here today, a considerable distance, to present a very interesting paper.

1540

ONTARIO FEDERATION OF ANGLERS AND HUNTERS

The Acting Chair: We will now move on to the Ontario Federation of Anglers and Hunters. Is Dr Ankney here? Welcome. You are the president of the Ontario Federation of Anglers and Hunters, and also a professor of zoology at the University of Western Ontario?

Dr Ankney: That is correct, Mr Chairman.

I would like to thank you for the opportunity to make this presentation to you today. The specific question I wish to address, of those that were listed in the document I was sent, is, should section 35 of the charter be changed in any way? My answer to this question is yes, specifically as it relates to native use of fish and wildlife.

Briefly I would like to tell you why I think a change is necessary. Human beings, like wolves, bears, weasels and so on, are predators. As someone once said, we are descendants of successful hunters. It is rare in nature for predators to overharvest their prey. Why? Simply because it is too much work. Predators, including people, are essentially lazy, so they do not spend time killing more than they need for food.

Also, predator numbers are usually much lower than prey numbers. That is essentially why aboriginal peoples did not overharvest fish and wildlife, except on a local scale; that is, the area around their villages. Given their

limited technology, it was too much effort to overharvest. The people were few and there was no reason to overharvest, even if it had been possible.

There are, however, situations in which predators do kill more than they need. You have probably all heard what happens when a weasel gets into a chicken coop or a bear gets into a sheep pen. The predator will sometimes kill 100 or more animals in one evening. Why? Essentially because it is easy and it is possible. Similarly we have all heard about non-native peoples shooting buffalo from trains and leaving them to rot on the prairies during the 19th century, and about people in this century netting spawning fish in numbers far greater than they need.

How does this relate to aboriginal use of fish and wildlife?

Once aboriginal people acquired European technology, and in some cases financial incentives, they acted no differently towards fish and wildlife than did non-aboriginals. I am going to give you several examples of this, some from the scientific literature and some from my own experience. I emphasize that this is not to show that native people are bad, but rather to show that they are just like other people when it comes to harvesting and overharvesting fish and wildlife.

The first has to do with native trapping. Most people are aware that, by the turn of the century, fur-bearer populations, especially beaver, were devastated in Ontario and much of the rest of Canada. Non-native people provided the financial incentive for this to happen, but by and large it was native people and Metis who did the overtrapping. One source states that the Indians literally declared war on beaver in the 18th and 19th centuries.

A second example involves caribou on Southampton Island in Hudson Bay. In 1924, the Hudson's Bay Co established a post on Southampton Island. Before that time, the Inuit rarely hunted caribou, mainly because they did not have the means to hunt caribou. They relied on food from the sea. There were an estimated 10,000 caribou in 1924. The Hudson's Bay Co provided guns and ammunition to these people. By 1930 caribou were scarce, and by 1955 they were extinct on the island. In 1980, I met the Inuit man who bragged about killing the last one.

The third example involves caribou hunting at McConnell River on the west coast of Hudson Bay. During my four summers at McConnell River, I had numerous opportunities to observe the native harvest of wildlife. The most blatant abuse I saw was three Inuit men who fired into a large herd of caribou, killed seven and wounded about 20. They took only the hind quarters and the tongues from the animals. They made no attempt to follow up and kill the wounded animals, probably, I assume, because they did not need them.

The fourth one involves James Bay geese and goose hunting. In the spring of 1976, I made arrangements for a graduate student of mine to accompany a Cree Indian and his two sons during their spring goose hunt near Attawapiskat on James Bay. The student was there to obtain weights and measurements from the geese as part of his research project. In 10 days, the three Cree hunters shot more than 100 geese, many of which spoiled.

The fifth and last example I want to mention involves native people on the Yukon Kuskokwim Delta in Alaska. There, via overegging and overshooting, they have recently reduced several goose populations to extremely low levels. This did not happen historically, because these people had neither the means of access nor the means of harvesting that they presently have; that is, things like skidoos, aircraft and modern firearms.

Let me once again emphasize that giving these examples is not an attempt to denigrate aboriginal people. I could give you many similar examples of non-native abuse of fish and wildlife. I am assuming you are familiar with that, particularly things that happened in this country in the 18th and 19th centuries. Rather, I wish to point out that, given the opportunity, native people are capable of overharvesting fish and wildlife, and of killing more than they need.

We currently have relatively abundant fish and wildlife populations in Ontario and in the rest of Canada. Why is that? Largely because, starting about 100 years ago, non-native people willingly gave up their rights to unlimited harvest of fish and wildlife. Also, Canadians have spent hundreds of millions of dollars to rehabilitate, protect and enhance fish and wildlife populations previously devastated by overharvest.

This overharvest was done by both natives and non-natives. However, in 1982, via section 35 of the charter, aboriginal rights were entrenched in the Canadian Constitution. As you are aware, those rights were not defined. I certainly have no idea of exactly what the authors had in mind when they wrote "aboriginal rights." Then in 1990 the Supreme Court of Canada gave us the Sparrow decision, which defined one aboriginal right; that is, the right to fish and presumably to hunt for food. The Sparrow decision has led the current Ontario government to a policy whereby status Indians can harvest fish and wildlife virtually unrestricted.

The government also proposes to give these rights to non-status Indians and Metis. Ironically, I note that Mr Joe Miskokomon, head of the Union of Ontario Indians, recently stated that the present policy is too restrictive.

1550

From a conservationist point of view, the present policy is potentially disastrous. Why? Because it means that 70% of Ontario's native people are not subject to any conservation laws. As Mr Krasnick told this committee recently, only about 30% of natives in Ontario live on reserves; that is, are subject to native conservation rules and regulations. During the past several months, I have met with native leaders around Ontario and I have raised this concern.

First, all of them have assured me that they believe that given a certain amount of time, they will be able to develop conservation rules and regulations and be able to enforce those rules and regulations on reserves. But all of them also agreed that it is a very serious problem as to what to do about off-reserve native people. Several have told me that if off-reserve natives will not abide by native rules regarding fish and wildlife, they should be subject to non-native laws. Unfortunately section 35, and the Supreme Court's interpretation through the Sparrow decision, will not allow this.

As a result of the non-definition of aboriginal rights in section 35, we have a situation whereby Ontario's fish and wildlife are threatened. We also have the highly divisive situation wherein natives and non-natives may work side by side in a factory, in a government office and so on, but one hunts and fishes unrestricted, while the other must follow conservation laws. I doubt very much that this is what the authors of section 35 had in mind. Regardless, because aboriginal rights were not defined, this is the result.

I do not intend to knock the Supreme Court for starting to define aboriginal rights, because somebody had to do it. However, I believe this issue is far too important to natives and non-natives alike to leave it to the courts. So I think the whole issue of aboriginal rights regarding fish and wildlife must be reconsidered and redefined.

Ultimately I believe it would be best for our fish and wildlife resources, for native people and for non-native people alike, if all Ontarians were subject to the same conservation laws, laws that are based on sound, ecological principles and that have successfully protected our fish and wildlife. After all, as the Honourable Bud Wildman recently told native leaders, it would not make any sense for the natives to have the right to fish and hunt if there is nothing for them to catch or hunt.

Mr Drainville: In terms of the comments made about the need for further definition of what aboriginal rights entail in terms of the Constitution, I would agree there needs to be far more definition and that a political definition should be given, as opposed to having to rely upon the courts to do that. On that, I am in agreement with you.

In terms of the totality of the presentation you give, I must say that I am a little disconcerted with the number of things you have spoken about in relationship to the native people, thereby, unfortunately, leading to the conclusion that native people somehow are less committed to the environment and to conservation. I do not doubt for a minute some of the things you said, not at all. I just want to add to the record that I live in the near north, and practically every day, around where I live up in Haliburton county, there are people poaching around my property. There are no native people in my area. They are people from the surrounding area who poach. That is just the way it is. I live not too far from the park as well, and there are a lot of people who just go to the park to hunt even when it is not in season for hunting, and those people obviously do not have the kind of respect we need to expect from citizens in this country as regards the environment.

I just want to say that although the things you point to are certainly concerns that need to be responded to, I think if one were just dealing with the evidence you have presented, one would almost think that this was solely a problem of native people breaking conservation laws. That is just not the truth, and I want to say that in terms of the record.

Mr Ankney: First, I would agree with you about the definition. As the previous speaker emphasized, the easy thing is to write something into the Constitution; the tough part is to find out what it means and then to enforce it. I would like to respond to your comment. I tried; I guess I

did not succeed in emphasizing that my point was not that native people are worse than non-native people when it comes to fish and wildlife. I think everybody here is aware of the non-native people's abuse of fish and wildlife.

But there seem to be a lot of people in Ontario and in Canada who are not aware that given the opportunity, some native people—and again, I do not mean to imply all—will abuse those privileges. The difference between what you have said here is that at the moment those people you are talking about who are poaching are subject to the law and if caught are subject to fines and so on. At the moment in Ontario, native people doing the same thing are not subject to the law. That is the difference.

Mr Drainville: I guess the response would have to be made that in terms of the agreement the provincial government just recently signed in Algonquin Park, there was agreement as to quotas and how that was to be done, where it was to be done and when it was to be done. So to indicate that there is no check at all in this area I think again is just going to an extreme which is not particularly fair to the situation.

Ms Carter: I must say I find your presentation simplistic. Obviously there are native people who do the things that you have said they do, just as there are people of European origins who either are good hunters who observe the laws or are not. But I think we have to take the big picture into account here. For example, when North America was inhabited solely by those people before the days of Columbus, they did live symbiotically with the environment in a way Europeans have never done, and the environment would have lasted indefinitely had Europeans not come or had their way of life not changed.

When the European way of life impinged and complicated things—for example, they got guns and so on, or could be paid for pelts that they hunted—obviously their lifestyle changed. There were temptations. They had to survive and they had to fit in to some extent. But the fact remains that their native traditions, their folklore, their view of the world, which is ongoing, is one that does have a deep regard for the land and forests as an ongoing giver of life in a way that is differently based from the view we have of the world. That is something that would give us all a rosier future than we have at the moment.

I think there is an implication in what you are saying that nobody in this day and age should be able to live off the land directly, as Indian and Inuit people have done in the past. I am not sure how many people still do that in Ontario. I think there are some, or there are some who are still very largely dependent on fishing and hunting and so on as a livelihood. I think we have to respect that.

That is a way of life we need to keep alive because it involves knowledge and so on that we could do well to preserve and learn from. If you are going to apply laws in the way you suggest, that would no longer be possible. Maybe there should be a possibility there for white people who want to live in that kind of way to have the same kind of coverage. I do not want to be dogmatic about this, but I think it would be good if that possibility were left open.

Also, I would like to point out that I do not think here and now that it is hunting and fishing that are destroying the pool of game and fish. I think it is pollution. We are losing whole lakes, whole forests because of things like acid rain. If the ozone layer continues to thin, we are going to have drastic consequences from that. I was at a cottage recently and I noticed, for example, that there seemed to be no frogs around any more. I do not think anybody killed those frogs. I think they have just gone because of some kind of pollution that we have put there and we do not even know what it is specifically that is doing that. I think we have to recognize that it is the way of life Europeans have developed that is threatening the world at the moment.

1600

Mr Ankney: If I may respond, I would have to agree with a lot of what you have said. You are right, that there are some people who are still living off the land in northern Ontario and so on. That is not what I am talking about. Most of those people have treaty rights to do that. I was not talking about treaty rights, I was talking about aboriginal rights and the way those have been defined by the Constitution and the Supreme Court.

The main point I wish to make—this is a point I have raised with native leaders and they agree it is a serious concern—is that 70% of native people in the province do not live on reserves. That means that at the moment they are not subject to native regulations, because there is no way for a native person living in London, Ontario, who is from a reserve by Brantford, to enforce the regulations they have in their own treaty area. They are now not subject to non-native regulations either, and that is the concern I have.

I did not mean to imply that the only problem with fish and wildlife populations in Ontario or in Canada was overharvest. In fact, we have a successful situation of conservation laws in place that have reversed the travesties of the 1800s so that we do have abundance.

What concerns me is that we are now getting away from that. As I mentioned, the native leaders I have dealt with are also concerned about this direction, because they realize there is a large group of native people whom they do not have any control over, and if they are not subject to non-native laws either, that is a potential conservation problem.

Mr Winninger: Dr Ankney, I have some difficulty agreeing with your analysis of the implications of the Sparrow decision. While the decision did recognize the right to harvest for food and also for ceremonial purposes, that right was subject to and restricted by the interests of public safety and conservation measures. I fail to understand why, where 70% of the aboriginal people live off reserves, they would not be subject to the same public safety and conservation measures that non-native hunters are subject to. For that reason, I fail to see how we are treating natives and non-natives disparately for the purposes of public safety and conservation. I do not see that at all.

Mr Ankney: Certainly the Ontario government policy in terms of public safety, by and large, reflects the same rules and regulations that apply to non-natives, but in terms of conservation it does not, because native people have been told they can hunt and fish for food at any time,

in any place virtually, particularly in northern Ontario, and in any fashion. The people who live on reserves, the way it has been explained to me by the Indian leaders I have met, said: "Don't worry. We're going to set up our own conservation rules about when we're going to shoot whitetail deer, when we're going to catch fish, and the species and so on." The concern is the 70% who will not be subject to those rules and regulations. They are not at the moment subject to the Ontario Game and Fish Act rules and regulations that were put in place to protect fish and game populations.

Mr Winninger: But where fish and game populations are threatened, measures can be taken under the Sparrow decision. Surely you agree with that.

Mr Ankney: It becomes very difficult in a particular instance to say, "If that native person shoots that moose, that is going to be what starts the problem of conservation." In other words, if you do not have rules and regulations, where do you say, "Okay, that moose is one too many," or that deer or that spawning fish? If there are no rules and regulations, when do you know you have a conservation problem except when you have a really serious problem?

Mr Winninger: I acknowledge your argument. I just do not agree with it.

The Vice-Chair: Are there any other questions at this time? Have you any final points you wish to make to the committee.

Mr Ankney: I would just like to emphasize again that my point was certainly not that native or aboriginal people are worse than non-native people when it comes to use of fish and wildlife. My point was that given the means to act as non-native people did, in some cases native people have acted in that way, have overharvested fish and wildlife.

I am concerned by the lack of definition of "aboriginal rights" in section 35, especially as it relates to fish and wildlife, that this does pose a conservation threat to fish and wildlife. I think we would all be better off if, through negotiations and whatever with native people and non-native people, we could agree on what aboriginal rights to hunt and fish for food really mean.

The thing we have to keep in mind is that when we rewrite the Constitution, if we do, it is not for just today or next week. It is presumably for years and years. At the moment, native people are only 200,000 in Ontario, but when they get to be 500,000, would it be possible for our fish and wildlife resources to support that many people hunting and fishing for food? Clearly not.

ELECTION OF ACTING CHAIR

The Vice-Chair: At this point I would ask the clerk of the committee to come to the front so we may carry on with the next piece of our business. I would like to inform the committee that I leave the chair and turn it over to the clerk of the committee.

Clerk of the Committee: We do not have a Chair. The Vice-Chair has left the chair. It is my duty to call upon the members to elect an acting Chair.

Mrs Marland: Mr Clerk, I would like to place in nomination as acting Chair of the select committee on Ontario in Confederation the name of Gilles Bisson, who is the Vice-

Chair. Speaking as someone who has not been privileged to be a member of this committee for the duration the committee has been in existence, but as someone who has been in the Legislature six and a half years and knowing how standing committees of the Legislature work and how important the position of Chair is to the whole process, I think it is important on this particular committee that we have someone who has a historical perspective of what the committee has been dealing with for over a year now. Is it correct that you have been sitting for more than a year?

Clerk of the Committee: Since February 4.

Mrs Marland: Since last February. My position in placing that name in nomination is that, first of all, Mr Bisson is a francophone from northern Ontario. He has been a member of the committee from the beginning, I understand. I feel that with his experience as Vice-Chairman he is the logical person to become the acting Chair, since we are at a point where the chairmanship has to change in any case.

The fact that I have not been a member of this committee gives me a perspective of not being entrenched with any personalities. I do not know any of the involvements of personalities through the process of the five or six months the committee has been sitting, so I think I bring a fresh perspective in placing that nomination. I am speaking especially as someone right now in this room who has at least two years more experience than one other member and in most cases five years more experience in the Legislature than all other members of this committee. So it is with respect that I place the name of Gilles Bisson in nomination to become acting Chair.

Clerk of the Committee: Very well. Any other comments? I have a motion placed by Mrs Marland for the acting Chair to be Mr Gilles Bisson.

1610

Mrs Marland: If you are going to take the vote, could we not take our 20 minutes we are allowed to get our members in to take part in this vote? I am suggesting we have two members of the official opposition who are not present at this point and we are allowed to request 20 minutes to call a vote. Am I correct?

Clerk of the Committee: That is correct.

Mr Bisson: We are still open for nomination.

Clerk of the Committee: We have a motion. Let's do the motion first.

Mrs Y. O'Neill: I do not think my members were aware this procedure was going to take place today, or they would not have left. I am not positive I can contact them, but I would certainly like to be given the opportunity.

Clerk of the Committee: We might order a recess at this time for 20 minutes.

Mrs Marland: If I may continue, I can quite understand Mrs O'Neill's comment that she is not sure whether she can locate her two members. I think since the election of acting Chair is not on the agenda for today it would be—

Mrs Y. O'Neill: It was not on the agenda and I do find that—

Mrs Marland: —quite in order for this matter to be deferred until tomorrow. The members who are not here should be notified in person that this important election is going to take place tomorrow and it would be on the agenda for tomorrow. We can agree at what time tomorrow it should take place.

Clerk of the Committee: Unfortunately I do not believe I can adjourn the meeting. I believe I can take it to a recess to allow members to be called. An acting Chair can certainly adjourn the meeting. I do not believe I have that authority.

Mrs Marland: We can just reverse. The very fact that it is not on the agenda, which is something I had not realized until a moment ago, means we can just agree it has to revert back to the person who was in the chair and we can deal with it tomorrow.

Clerk of the Committee: That would involve withdrawing the motion. You are the mover of the motion, Mrs Marland.

Mrs Marland: I will only withdraw it if we are not going to deal with the matter today and I would be in the position of being the first to place that motion when this matter is dealt with tomorrow. I think Robert's Rules of Order would permit that in this instance.

Mr Bisson: I do not think there would be any opposition from the government side of the committee on that.

Clerk of the Committee: For the withdrawal?

Mr Bisson: Yes, the withdrawal of the motion and have it put on the agenda tomorrow.

Mrs Marland: In that case, rather than withdrawing it, why do I not just table it until tomorrow?

Clerk of the Committee: It will be withdrawn. If it comes tomorrow, it will come tomorrow and you will have your opportunity at that time.

Mr Bisson: Can I just have one other word?

Mrs Marland: Excuse me, I think we need a clarification here. I think it is in order for me to table my own motion. Therefore, it would be the first motion called tomorrow when this matter is dealt with.

Mr Bisson: May I just clarify a couple of points? The House leaders were contacted—just for the sake of the record—as to the vote taking place at this time. I spoke to the subcommittee member of one of the caucuses before and I spoke to the honourable member on the other side just shortly before as well. We do not have a problem on the government side, as I said earlier, deferring until tomorrow. If that is the wish of the committee we would be prepared to do that, but we would just like to state that it was mentioned at the House leaders' level as far back as Friday, I believe.

Clerk of the Committee: Very well then. The matter will be deferred. Can we have the Vice-Chair?

Mrs Marland: I am moving that my motion be tabled.

Mrs Y. O'Neill: Obviously my members watch TV.

The Vice-Chair: It is nice to be back in this vantage point once again.

Mrs Marland: Now that we have a full complement of voting members, I would be quite happy for us to proceed.

The Vice-Chair: It was nice coming back for this short while, but I believe back I go. If that is quite all right with the rest of the committee, we will go ahead to have the vote at this time. It seems we have a full quorum. I leave the chair.

Mr Bisson: Just to make it clear, this discussion did happen on Friday among the House leaders—the government House leader, the Progressive Conservative House leader and the Liberal House leader. They were informed that the vote would be taking place today. I know, in my duties as Vice-Chair, I had spoken to the subcommittee member of the Liberal Party. Unfortunately, I did not get a chance to speak to the subcommittee member of the Conservative Party, as I did not see him until he arrived in the room, but assumed unfortunately that the House leader had communicated that information to him. So with that, there is no further objection.

Mrs Marland: It is not being handled in an orderly fashion. If this vote were to take place, it should have been on the agenda. I respect the fact that the discussion between the House leaders took place on Friday and perhaps this agenda had already been distributed for today, and that is why it is omitted.

Seriously, I think in fairness, as the person who has placed the motion now on the floor, both these members were not in the room and did not hear why I placed the name in nomination, and I would like to think they might consider supporting my motion, but how can they support it if they have not heard it?

Mr Offer: Maybe I can be of some assistance. I am concerned that it is not on the agenda. However, this whole matter may be resolved if we had, for instance, a five-minute recess and I would accordingly request a very short recess so we can determine what should happen in the next short while, and I believe we can resolve this.

Mr Bisson: If I can have a word, the only problem is that two of our members have airplanes to catch in a very short time. We would be prepared to go now, if that would be the pleasure of the rest of the members, or to defer till tomorrow morning. Whatever is easier, we are more than prepared to do. We can afford a five-minute break, or go till tomorrow.

Mrs Y. O'Neill: I do not think five is enough for me.

Interjection: We will do it tomorrow.

Mr Bisson: Okay.

Mrs Marland: I will table my motion to be dealt with as the first item tomorrow morning.

Clerk of the Committee: Very well. Could the Vice-Chair take the chair and adjourn this meeting, please?

Mrs Marland: Is it possible we could have a copy of Instant Hansard for tomorrow morning so I do not have to repeat my motion?

Clerk of the Committee: We will try our best.

Mrs Marland: Thank you.

The Vice-Chair: The committee will come to order. Hopefully this is the last time I move chairs this afternoon. With that, the committee is adjourned until tomorrow morning.

The committee adjourned at 1618.

CONTENTS

Monday 12 August 1991

Denise Réaume	C-1305
Ontario Metis Aboriginal Association	C-1309
Ontario Federation of Anglers and Hunters	C-1317
Election of acting Chair	C-1320
Adjournment	C-1322

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

Chair: Silipo, Tony (Dovercourt NDP)**Vice-Chair:** Bisson, Gilles (Cochrane South NDP)

Curling, Alvin (Scarborough North L)

Eves, Ernie L. (Parry Sound PC)

Gigantes, Evelyn (Ottawa Centre NDP)

Harnick, Charles (Willowdale PC)

Harrington, Margaret H. (Niagara Falls NDP)

Malkowski, Gary (York East NDP)

Mathysen, Irene (Middlesex NDP)

Offer, Steven (Mississauga North L)

O'Neill, Yvonne (Ottawa-Rideau L)

Winner, David (London South NDP)

Substitutions:

Drainville, Dennis (Victoria-Haliburton NDP) for Mr Silipo

Marland, Margaret (Mississauga South PC) for Mr Eves

Clerk: Brown, Harold**Staff:**

Drummond, Alison, Research Officer, Legislative Research Service

Kaye, Philip, Research Officer, Legislative Research Service





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Le mardi 13 août 1991

Comité spécial sur le rôle de
l'Ontario au sein de
la Confédération



Chair: Tony Silipo
Clerk: Harold Brown

Président : Tony Silipo
Greffier : Harold Brown

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Table of Contents

Table of Contents for proceedings reported in this issue appears at the back, together with a list of committee members and other members taking part.

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Table des matières

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

Tuesday 13 August 1991

The committee met at 1009 in room 151.

The Vice-Chair: The committee will come to order. Welcome to this our second day in the third week of our hearings. At this point I will vacate the chair in order to conduct the business of the committee. Will the clerk please take over?

ELECTION OF ACTING CHAIR

Mrs Marland: Mr Clerk, I understand from the agreement that we had yesterday afternoon that my motion placing in nomination the name of Mr Gilles Bisson is the motion that is now before the Chair, the Chair being the clerk at this time.

First of all, I am sorry that if Mr Hogg is here he is going to have to wait while we go through this procedure; I would have preferred that the election of the acting Chair was on today's agenda. I notice this is now the second day it is not on the agenda, although we agreed yesterday that it would be the first item dealt with this morning. And I hope, in deference to Mr Hogg, that he has been advised that we have a little committee business to deal with.

I am assuming that since I tabled my motion yesterday that be the first item to be dealt with this morning that it is my motion that is now on the floor.

Clerk of the Committee: Yes, I will entertain your motion now.

Mrs Marland: Would you like me to re-place the motion?

Clerk of the Committee: I think that would probably be okay.

Mrs Marland moves the motion to place a nomination as acting Chair of the select committee on Ontario in Confederation in the name of Gilles Bisson, who is the Vice-Chair.

Mrs Marland: Speaking as someone who has not been privileged as a member of this committee for the duration that the committee has been in existence, but speaking as someone who has been in the Legislature six and a half years and knowing how standing committees of the Legislature work and how important the position of Chair is to the whole process, I think it is important in this case on this particular committee that we have someone who has the historical perspective of what the committee has been dealing with for over a year. Apparently the committee has been sitting since last February 4.

My position, Mr Clerk, in placing that name in nomination is that, first of all, Mr Bisson is a francophone from northern Ontario. He has been a member of the committee from the beginning, I understand, and I feel with his experience as Vice-Chairman he is the logical person to become the acting Chair, since we are at a point where the chairmanship has to change in any case. I was referring to the appointment of Mr Silipo to cabinet.

I think the fact that I have not been a member of this committee gives me a perspective of not being entrenched with any personalities. I do not know any of the involvements of personalities through the process of the five or six months the committee has been sitting, so I think I bring a fresh perspective in placing that nomination, and especially I am speaking as someone right now in this room who has at least two years' more experience than one other member and, in most cases, five years more experience in the Legislature than all other members of this committee, so it is with respect that I place the name of Gilles Bisson in nomination to become acting Chair.

My reference to experience is just explaining that the standing committee and select committee process is perhaps the most important aspect of the function of the Legislature. This is where the work is done. This is where we invite the public to make their opinions known on any legislation or issue before us, and I have great confidence in Mr Bisson because he has been a member of this committee since its inception and a logical progression has always been for vice-chairmen to become chairmen if for some reason during the term of that committee appointment there has to be a change. If Mr Bisson was not suitably equipped to become Chairman in the case of the absence of the Chairman, then I would wonder why he was appointed by his government party to the position of Vice-Chair. Obviously, he is capable of being Chair in the absence of the Chairman, so it is a logical progression, and I hope we will have support for my motion.

Mr Bisson: I would like to thank my nominator for the kind words that were expressed in regard to the confidence that she put in me, but I would like to decline the nomination at this time. My responsibilities within the government as parliamentary assistant to two ministries and also an office, francophone affairs, as well as being chair of northern caucus and chair of deaf education, puts me in a position where I would not have the full time to dedicate to the work of this committee. I feel that I best can serve the work of this committee as Vice-Chair in assisting the Chair, and with that I would like to move the nomination of Mr Dennis Drainville as acting Chair of this committee.

Mrs Marland: I would like to speak to that nomination. Obviously, I have to accept Mr Bisson's declining my nomination, and I have no personal feeling one way or the other for the nomination of Mr Drainville, on a personal basis, but it is my understanding that Mr Drainville has not been sitting as a member of this committee, and I think what we are experiencing right now is some gamesmanship on the part of the government, and the gamesmanship I do not understand.

When it comes to writing the report, it stands to reason that the Chairman of this committee should be somebody with some tenure and experience on this committee. I am

very surprised that Premier Rae would in fact want to appoint someone as Chairman of this committee, passing over someone who is a representative of northern Ontario and, as I said previously, is also a francophone. I think this committee could well have benefited from both those facts in Mr Bisson's appointment. I think that if it was not to be the Vice-Chair's succession to the Chair with the support of the Premier's office, then it would have been logical to have any one of the other members who have sat on this committee all along. I notice Mr Winninger is not here today, but I think he is a full-time member of this committee, is he not?

Clerk of the Committee: He is.

Mrs Marland: I am only just throwing that name out as a suggestion, but I think it is a totally absurd process to nominate someone to this committee, of all committees, to chair this most critical committee in the history of this province, someone who has not been sitting as a member of the committee and, for that matter, someone who, I guess as is the case with everybody, is fairly new to the process.

I understand that this is a committee to be chaired by a government member, and I have respect for that. On a personal, individual basis, I have respect for Mr Drainville. I am simply saying that I do not support the process that is going on here today, and I think that it is time that we got away from gamesmanship and appointments based on goodness knows what. I have no idea what is behind the appointment of somebody from outside of the committee to chair this committee, and I am very disappointed in this process.

I will not support the nomination because I do not support the process of appointing an outside member, and for those members of this committee that have not been involved in writing a report of a select committee to the Legislature, perhaps you do not recognize the significance of the role of Chairman in the writing of that report. It is not simply chairing and conducting further public hearings, and I say that to all of you with respect. That is the situation you are in. I am quite sure that you have been told who to vote for, and you have no choice in the matter, so I do not deal with this on a personal issue with any of the six government members who will be voting this morning. It is the Premier's office or whoever it is that has made the decision as to who will chair the select committee of Ontario in Confederation. It is an inappropriate chairmanship appointment, even as an acting Chair, I suggest.

Hon Mrs Copen: For the information of the people in this room, the government committee members are going to vote freely on the Chair of this committee.

Mr Drainville's family settled in the province of Quebec in 1615. He himself was born in Quebec, is bilingual and has worked over the last couple of years with the francophone community and the native people. We, as a committee, feel very, very confident with Mr Drainville, and for someone who has been here from the opposition just a couple of days to make an evaluation, as Mrs Marland has, and talk about gamesmanship—the last two days, Margaret, have been like a ping-pong game. If we are going to talk about games, I think the ball started at that side of the room.

We, as a whole committee, are very confident that Mr Drainville will carry this committee through—

Mrs Marland: I am sure you are.

Hon Mrs Copen: —and Mr Bisson, in nominating Mr Drainville, has just reaffirmed our feelings, and Mr Drainville will be the best Chair if, after we have our election—if you will allow us, instead of going on with the ping-pong game. We are here to work this morning. We have witnesses here that we really want to listen to—

Mrs Marland: Yes, I agree.

Hon Mrs Copen: —not just the rhetoric of you and me talking for the last 20 minutes.

Ms Harrington: As an original member of this committee on February 4 when we began this journey across Ontario for the future of this nation, I would like to remind people of the prayer of the native peoples in Kenora, Ontario, with which we started this committee, and that we hold to that duty.

I would also like to thank Mrs Marland for her kind words with regard to Gilles Bisson. I remember that particular week in northern Ontario was a very emotional week, and Mr Bisson is a wonderful member of this committee.

I would also like to remark that it is the duty of all the members of this committee to be involved in writing the report for this committee, and I hope that each one of us will take that very seriously.

The job of chairing the committee is very important, and I certainly have confidence that Mr Drainville can do this very adequately. Thank you.

Clerk of the Committee: I have a nomination by Mr Bisson nominating Mr Drainville as acting Chair of the committee.

Mrs Marland: Can we have a recorded vote, Mr Chair?

Clerk of the Committee: There has been a request for a recorded vote.

The committee divided on Mr Bisson's motion, which was agreed to on the following vote:

Ayes—5

Bisson, Carter, Harrington, Malkowski, Mammoliti.

Nays—2

Curling, Marland.

1020

The Acting Chair (Mr Drainville): Before we begin our day's proceedings, I just want to say that this is not the most auspicious of beginnings for a Chair of a committee. To that extent, I wish to apologize, first of all, to Mr Hogg for taking up his very good time. We will certainly give him the appropriate time to make his presentation.

In following in the footsteps of Tony Silipo and Gilles Bisson, it is my feeling that they have handled themselves in the chair very well. They have been able to maintain a non-partisan spirit which is absolutely essential to the committee as we look at some very substantive issues for the future of this country. I want to commit myself to that same path and to thank them for their leadership. I look forward to their help in giving me advice as I need it, and also the help of all the subcommittee members, Mr Harnick and

Ms O'Neill, who have served this committee so well in the last number of months.

PETER HOGG

The Acting Chair: I ask Mr Peter Hogg to come forward. Welcome, sir. You have 30 minutes for your presentation. I hope you will allow some time for questions.

Dr Hogg: Thank you very much, Mr Chairman, and thank you, ladies and gentlemen. I am a professor of law at the Osgoode Hall Law School. I am on leave at the moment at the law firm of Blake Cassels & Graydon.

I sent to the clerk a few weeks ago a short form of curriculum vitae, so that should be in the files of the committee. I have another copy. I have also sent to the clerk a paper entitled *Is the Constitution of Canada Ready for the 21st Century?* That paper was prepared for a conference in June. It has also been used as one of the papers in the project on the constitutional process which Professor Monahan is engaged in for the government of Ontario.

In the letter which the clerk sent me, he asked me to concentrate on the division-of-powers issues. So I am going to pick a segment out of the paper, starting at page 11, and I will briefly make the points that appear in that segment. It is about eight or nine pages of the paper.

I am considering, first of all, the topic of special status for Quebec. The topic here is the question whether it is appropriate to grant to Quebec powers that are not shared by the other provinces. That is, of course, one possible way of reaching a constitutional accommodation and it has the advantage that Quebec undoubtedly wishes to exercise more powers than the other provinces wish to exercise.

To do that would involve granting what is usually called by constitutional lawyers "special status" for Quebec or, as it is sometimes described, an "asymmetrical federalism," federalism in which the powers are not symmetrically distributed.

I want to make two points about that. They are both in the paper. The first is that I think, as a political matter, special status is not an acceptable option, and I say that because of the history of the Meech Lake accord. Members of the committee will recall that the Meech Lake accord was rather carefully drafted to accommodate Quebec's five demands in ways that applied to all the provinces, so there was an unwillingness by the first ministers at the time of Meech Lake to grant a unique constitutional status to Quebec.

But the one point that, by its very nature, could not be generalized in that way was the "distinct society" clause. The "distinct society" clause, by definition, was particular to Quebec and not to the other provinces. Members of the committee will recall that it was the "distinct society" clause which became the focus of the most intense opposition to the accord.

My own view was that there was very little merit to the opposition; but it became clear to me that simply recognizing that the province was distinct was a controversial matter; and the idea that the recognition of Quebec as distinct could, indirectly, give it larger powers than the other provinces was even more controversial.

I think the lesson one has to draw from that is that there is a great deal of public opposition to the idea that the province of Quebec should have a special constitutional status.

1030

My second point is that, as a legal matter, there are serious limits on the degree to which unique constitutional powers can be conferred upon a single province. The problem that special status for Quebec gives rise to is that the federal Parliament would have less authority in Quebec than in the other provinces. That obviously would be the consequence. Yet members of Parliament from Quebec would obviously continue to be full voting members of the Parliament. So you would have the peculiar situation of members of Parliament from Quebec voting on legislation which could not, because of Quebec's special status, apply in Quebec.

One obvious approach might be to say that the Quebec members should not vote on issues in which the legislation could not apply in Quebec. The problem with that is that the votes of members from Quebec might well be needed to preserve the government's majority and avoid its defeat. To adjust this problem would require a rather radical adjustment of the rules of responsible government.

This particular problem, of Quebec members of Parliament voting on issues which cannot be relevant to Quebec, does actually occur now because, for example, Quebec has opted out of the Canada pension plan. Quebec has its own pension plan, as you know, and therefore, when the federal Parliament enacts an amendment to the Canada pension plan the Quebec members of Parliament vote on legislation which cannot have any application in the province of Quebec.

To some degree, Quebec does now have a special status but it is not a status that is enshrined in the Constitution. It is a status which has been freely chosen by Quebec, exercising choices which are available to the other provinces as well.

For those two reasons, it would be my submission that it is not likely to be a profitable exercise to explore too seriously the idea of giving Quebec a set of distinctive powers which the other provinces would not have. If that is correct, then let me turn to the next heading in my paper, on page 14, which is "Decentralization".

If it is the case that special status for Quebec is not a desirable option, the only alternative, of course, is a general decentralization of powers. If the new powers that Quebec seeks were conferred on all provinces, then there would be no special status and none of the problems of asymmetrical federalism.

However, any significant decentralization of powers obviously carries with it a lot of problems. One problem, a purely political problem, is that a substantial decentralization of powers would probably not be publicly acceptable outside the province of Quebec.

The second problem is that the federal government must remain fiscally powerful enough to manage its debt, to manage the economy, to carry out what would be left of its legislative powers and, most important of all, to fund transfer programs to the poorer provinces.

A third point, related to the last one, is that any general decentralization of power will create problems for the smaller provinces, because the smaller provinces clearly would lack the capacity to carry out greatly increased responsibilities. They are already, with their existing responsibilities, heavily dependent on federal funding to maintain the standard of living of their residents. So there are certainly

difficulties in the notion of a substantial, general decentralization of powers.

In the paper I have tried to suggest some of the areas where some decentralization might be possible. Let me just very briefly do it. I am alert to the clock and I do want to leave plenty of time for questions. Since you have it in writing, there is no point in my being particularly verbose about it.

The first point I deal with is powers over health, education and welfare. As you know, those powers are, under the existing Constitution, almost exclusively provincial. Nevertheless, there is, as you will know, a very heavy federal presence through the federal funding of national shared-cost programs. The achievement of true provincial autonomy over health, education and welfare really involves a restriction on the spending power of the federal government, because it is through the spending power of the federal government that the federal government is able to make the stipulations that it makes through the Canada Health Act and the Canada assistance plan. So it is very likely indeed that some form of restriction on the federal spending power will be critical to Quebec's acceptance of a new constitutional arrangement. That was of course one of the elements in the Meech Lake accord. Section 106A imposed restraints on federal spending in areas of exclusive provincial jurisdiction.

A very serious problem about a general federal withdrawal from the fields of health, education and welfare is that if nothing were put in its place, it would mean the abandonment of national standards which, of course, now exist in the areas of health care and of welfare. They do not exist in the area of post-secondary education, although that area is also substantially funded by the federal government.

1040

If it were thought that normal political influences would not suffice to maintain decent standards of health, education and welfare in every province, one of the ideas that has become current is the idea that the Constitution could include some guarantees of basic social and economic rights, so that although the provinces would be free of federal strings in designing their health, education and welfare programs, they would be backed by standards set out in the Constitution that would guarantee to the residents of all provinces certain minimum national standards in those fields.

I think that is a very interesting idea. I would caution the committee, however, against making standards of that kind judicially enforceable. I think it would be a mistake for standards of that kind to be enforced in the courts because I think the courts lack both the expertise and the political accountability to make decisions which would have profound effects on the spending priorities of provincial governments. But it seems to me that we could still put into the Constitution guarantees accompanied by mechanisms other than judicial enforcement in order to monitor the observance of the standards. For example, legislative or administrative structures could be set up to examine and report on the progress of governments in the achievement of the social and economic rights that would now, I am assuming, be in the Constitution and to make recommendations, probably not binding recommendations, but recommendations

which would have, I assume, great moral and political force for corrective action by provinces that were held to be delinquent in observing the standards.

I go on in the paper and talk about a lot of other things. I talk about language, culture, the regulation of professions, trades and businesses, and family law. I will not pursue that—that is in the paper—but there are some other points there. I want to make one final point and then leave—then I will stop. I will not leave until you tell me to leave, Mr Chairman.

The heading of "Delegation" at page 19 of my paper is a point that the committee ought to give some thought to. At the moment, the Constitution has been held to prohibit the provinces from delegating powers directly to the federal Parliament and, similarly, to prohibit the federal Parliament from delegating powers to the provinces. One of the things the Allaire report from Quebec suggested was that if there were an extensive delegation of powers to the provinces, those provinces that did not want to exercise such extensive new powers might wish to delegate them back to the federal government. That seems to me to be a very sensible idea. It has that suggestion of special status, but the ability to delegate would be an ability that would be conferred by the Constitution on all provinces. So putting into the Constitution a power which does not exist at the moment, a power to have these interjurisdictional delegations, would be another useful accompaniment to any kind of decentralization of powers.

I think it would be desirable for me to stop there. I would be very happy to receive questions.

The Acting Chair: Thank you very much, professor. I believe we have eight minutes at this point and we have four people on the list, so I would ask those who are asking questions to be as brief as possible.

Mrs Y. O'Neill: Thank you so much, Professor Hogg. I want to thank you for all the contributions you have made to the constitutional discussion for a long time. I am getting a feeling that there is more pessimism than I want within the country. The last poll—and I do not live my life by polls—was not what I had hoped for.

Would you please comment on what seems to be getting some popularity, that there will be a separation and then a negotiation, and that is the only way in which many Québécois, in particular, and Canadians can deal with this—that the separation has to take place, because until that happens there will not be what the Québécois see as an equal posture?

Dr Hogg: I think if it became clear that it was absolutely impossible to reach an accommodation—and I do not share your pessimism. I believe that an accommodation will be achieved.

Mrs Y. O'Neill: It is not my pessimism; it is what I have been picking up.

Dr Hogg: I do not know what form it will take. I sort of have the opposite feeling, that somehow it is out there and it is going to happen. But if it did not, the desirable thing would be for the 11 governments to sit down and realistically attempt to negotiate what is then of course the only alternative: the separation of Quebec. That would be

the best way to do it because it would occur in a consensual way and the many things that would have to be adjusted between the two new countries could be adjusted in an atmosphere of negotiation and discussion. That would undoubtedly be the best way to go.

Unfortunately, a breakdown in discussions might make it difficult for that kind of consensual arrangement to be made. In that event, I suppose the likelihood is that Quebec would unilaterally declare its independence, would turn around and say, "We now regard ourselves as independent," and would seek to negotiate with the rest of Canada from that standpoint.

Mr Malkowski: Thank you for your presentation. Reading through your paper, there was one area—on page 47 you are talking about aboriginal people. Do you feel qualified to make recommendations on how to solve the requests that they have? If Quebec separates, do you have any opinions on what will happen to the natives who live in Quebec and their property rights and how those will be affected?

Dr Hogg: No, I do not know what the answer will be to that. Obviously the aboriginal people of Quebec will be a very important and powerful force in the province and a settlement will have to be reached with them. I am not sure what form that settlement would take, but it is difficult to see how the separation of Quebec could be successfully accomplished without, at the same time, achieving a settlement satisfactory to the aboriginal people of Quebec. I would assume that would be a necessary precondition of any kind of successful separation of the province of Quebec, but it is very difficult to speculate as to exactly what form that might take. As I say, I very much hope we will not ever reach that stage.

Mrs Marland: Dr Hogg, there has been a lot of discussion about the term "devolution of power." I have asked a number of people what the accurate interpretation of that term is and I have been advised that you would be one of the best people to ask that question of.

Dr Hogg: I do not think there is a precise definition. When we use the words "devolution of power," all we normally mean is a movement of power from the centre to the regions. For example, there has been talk about devolution of power in the United Kingdom, which has always meant moving power to Scotland and Wales and Northern Ireland. All it means in the Canadian context is the movement of power from the federal Parliament, the central government, to the provincial legislatures.

Mrs Marland: Another brief question. Your suggestion about what the alternatives are if the federal government withdraws from health and education and welfare—and you are looking to a legislative or administrative structure for enforcement, I think was the reference you made. Since the provision of those very basic human services on a national standard is so linked to a potential funding base of any individual province, even if the desire is there on the part of the province and even if we have a legislative and administrative structure for enforcing the desire, is the raw, horrible truth not the fact that we always will have the have and the have-not provinces, and so if you want to

have a good health system or a good educational system, the population will gravitate to the wealthy, have provinces?

1050

Dr Hogg: I think the raw, horrible truth certainly is that it will, for the foreseeable future, be impossible for the poorest provinces to maintain the same standards as the wealthy provinces without substantial transfers of federal money. That is one of the main reasons why I think that making one of these charters of rights, the social and economic rights, judicially enforceable is a silly idea, because it involves the co-ordination of several governments and very important spending priorities. If there was a monitoring structure which included representatives of the federal government as well as the provinces, then it might be possible to come up with sensible recommendations for improving the situation in a particular province that involved additional cash transfers from the federal government and that a delegate from the federal government had agreed to as part of this monitoring process. It seems to me it might be possible to form a group which was informed and authoritative on the political issues, as well as on the simple question of whether a particular set of standards had been complied with or not.

The Acting Chair: Thank you very much, Professor Hogg, for your presentation. I am sorry we do not have any more time, to the two people who were on the list for questions. It was an important presentation to be made before us.

PETER RUSSELL

The Acting Chair: I now ask Professor Peter Russell to come forward. Professor Russell, it is a great honour for me especially, after having known you for a number of years, to have you before the committee. You have been here before and you know many of the members. I believe we have 30 minutes for your presentation and questions.

Dr Russell: I was really pleased to come over here. I have been coming over here on my bicycle for over 30 years and today, for the first time, there was a bicycle rack at Queen's Park. The new government of Ontario is finally getting ready for the 21st century. It was a thrill to come this particular morning.

I did not come to talk about that issue. I came to discuss just three ideas with you. I did not answer all your questions, but rather thought that in the short time available, I would concentrate on just three ideas, which are set out in the short paper that is being circulated. Some of what I say will link very well with Professor Hogg and his more detailed presentation.

My first idea concerns Quebec. In this post-Meech round of constitutional politics, in English Canada it is not fashionable, indeed it is politically incorrect, to talk about accommodating Quebec. I understand those who oppose appeasing Quebec at any price. It is reasonable to oppose constitutional proposals which, however pleasing they may be to Quebec nationalists, would produce a highly decentralized federation that is not wanted by the majority of Canadians, but it is just as unreasonable to regard any

proposals aimed at accommodating Quebec's concerns as beyond the pale.

If Canadians inside and outside of Quebec are to continue to share citizenship—that is the way I would like members to think about it. This is the question before the country: Do we want to go on sharing citizenship, we the majority in Quebec and we the majority outside of Quebec? Do we want to go on being a single “we” with a common Constitution we all respect? If we are going to do that, then one majority cannot force its will on the other. No more can the majority of Quebec force its will on the rest of Canada than the rest of Canada can force its will on the majority of Quebec. That is very simply why an accommodation has to be found. This means that if the constitutional proposals your committee supports are to serve as a basis for the continuing unity of Canada, and I am for the continuing unity of Canada, they must have a ghost of a chance of being acceptable to the majority of Quebecers.

In my view, to achieve that, to come up with proposals from Ontario that have a ghost of a chance of being acceptable to a majority in Quebec, that does not mean you must just take the Allaire report of the Quebec Liberal Party, the governing party and accept it *holus-bolus*. The Allaire report of the Quebec Liberal Party is a negotiating position. It is not Quebec's bottom line. You should understand that in the post-Meech round, Quebec's bargaining strategy is exactly the opposite to what it was in the Meech round. In Meech, Quebec began with its bottom line—five conditions. It could not budge, not an inch, not a single inch, and the rest of the country could not take that. The rest of the country wanted to negotiate. This time they have gone the other way around. They have put the sun, the moon and the stars and everything in their opening position, knowing full well that they are going to back down from that, at least the government and the majority party in that province.

It is worth looking at the Allaire report, not with a view to, “Gee, do we have to take this whole bundle or leave it?” but rather, what is in there that appeals to you as a Canadian, what is in it that you think is acceptable not only to you but to a majority of Quebecers in Quebec.

I suggest that if you do that, much of what is in Allaire can be accepted without wrecking the federation or giving Quebec, in effect, sovereignty-association. You should at least be willing to consider the powers Quebec needs to secure and develop its distinctive culture. Most Canadians I have talked to, whether they are in Quebec or outside of Quebec, want Quebec to be able to defend and support a distinctive culture. That is a common Canadian purpose, I hope, for most Canadians, including all members of this committee.

Here I point out that 21 of the 22 powers which Allaire proposes be under exclusive provincial jurisdiction are already either exclusive or shared fields of provincial jurisdiction. I repeat that: That great list of powers Allaire says they want to be under exclusive Quebec jurisdiction is already either exclusive provincial or concurrent provincial powers—21 of the 22.

Much of what Quebec is asking for is constitutional protection against the use of the federal spending power in fields of exclusive provincial jurisdiction. Professor Hogg

has already touched fully on that point. It may very well be that only Quebec wants this protection. In that case, I hope you will be willing to extend the special status for Quebec that already exists in our Constitution, in a number of respects, and not insist on some new dogma of provincial equality, which would be a new dogma. It would be a very dogmatic idea to suddenly bring into the Constitution that every province must be identical. They have never been treated that way and it would be a great mistake to erect that as a dogma now.

1100

Further, I urge you not to support the attack on the “notwithstanding” clause in the Charter of Rights. That clause is essential to Quebec's sense of cultural security. It is also a monument, in my view, to our Canadian capacity of combining the best of American and British constitutionalism. I am pleased that Premier Rae shares this view. I will leave with the clerk of your committee a copy of a full-length article I have recently published setting out the arguments for retaining the “notwithstanding” clause.

My second idea concerns Premier Rae's proposal that social and economic principles be added to the Charter of Rights, a proposal that my colleague Professor Hogg has already addressed. That proposal responds to the desire of a great many Canadians to strengthen the bonds of citizenship and nationhood. In Ontario and in English Canada generally, I suspect there is much more interest in constitutional changes of this kind rather than in decentralizing changes. If the constitutional aspirations of the English-speaking majority are to be served, there will have to be changes in this direction.

My problem with Mr Rae's proposal concerns means rather than ends. I think it would be a mistake to put social and economic rights in the charter. Why? Here my reasoning is the same as Professor Hogg's. Because to do so would be to hand over to an unaccountable, appointed judiciary the power to make a wide range of social and economic policy decisions. Judges and the process of litigation are the wrong instruments for making decisions about the appropriate levels of economic development and social policy across the country.

I suggest, to be constructive, that the place in the Constitution for incorporating Mr Rae's suggestion is section 36, the equalization section of the Constitution Act, 1982. Subsection 2, as you probably know, commits the federal government to maintaining “equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public service at reasonably comparable levels of taxation.”

But you may not be aware that subsection 1 contains a commitment to the wellbeing of individual Canadians wherever they may reside. Here I quote from the Constitution itself. I am not making these words up; they are in subsection 36(1) of our Constitution. It commits both levels of government, provinces and the federal government to:

“(a) promoting equal opportunities for the wellbeing of Canadians;

“(b) furthering economic development to reduce disparity in opportunities; and

"(c) providing essential public services of reasonable quality to all Canadians."

These objectives, I suggest to you, might well be embellished and fleshed out along the lines of Mr Rae's proposal. But I think subsection 36(1) of the Constitution Act, 1982, rather than the charter, is the place for stating the economic and social objectives to the federation.

The problem with section 36, however, is that no institution of government is assigned responsibility for observance of its principles. To remedy this, may I suggest that a reformed elected federal Senate be given such a responsibility. As a body representing and directly responsible to all the country's regions, the Senate would be in a strong position to monitor carefully the fulfilment of national standards and propose remedial action to both levels of government.

Indeed, I would go further and ask you to consider two other matters of national concern which have been neglected and might well be brought under the surveillance of a revitalized Senate: the various barriers to having a true common market in Canada and major environmental problems that transcend provincial boundaries. A Senate which played a leading role in these areas—equalization, the economic union and the environment—a functional triple E Senate could be a much more exciting institution to contemporary Canadians than simply rebuilding a chamber of sober second thoughts. I should add that Allaire accepts the first two of these areas, equalization and economic union, as essential Canadian objectives.

My third and final idea concerns the constitutional process, and this is a topic on which I earlier submitted to this committee a lengthy written proposal entitled *Towards a New Constitutional Process*. It is somewhere in your files. I will not return to that proposal now except to connect it to the stage in the process we are now at.

My basic proposal was that the key instrument for negotiating a constitutional accord should be a meeting of delegations from provincial and federal legislatures, the northern territories and the aboriginal peoples. Even though such a step is not now contemplated in the federal government's game plan, I think there is still a good chance that we will stumble into such a meeting, constitutional conference or constituent assembly, whatever you want to call it.

Very soon a federal parliamentary committee will be shopping a federal constitutional proposal around the country. Once the cabinet in Ottawa has finished its paper, it will turn it over to a federal parliamentary committee which will go touring across the country. That committee of the federal Parliament will be meeting committees like your own in every jurisdiction, and also interacting with an aboriginal process that is under way now.

All of these encounters will be bilateral in nature, the federal committee and one jurisdiction at a time. I think it most unlikely that when all that is over next February, at the conclusion of all those bilateral meetings, the federal committee will be able to report back to the Parliament of Canada and the people of Canada that it has worked out a clear national consensus agreeable to all the constituent parts of the country. If it has, terrific. I do not think it will.

If a consensus has not been forged through those bilateral meetings, then the time will have come for multilateral negotiations and the choice of instruments will then be a first ministers' meeting or a broader meeting along the lines I have proposed. At this point, even Mr Mulroney and his colleagues may recognize that the broader meeting may be more congenial to the Canadian people and therefore more conducive to politically acceptable results.

In this case, if we have the broader meeting of legislative delegations, a number of you may well be involved in the crucial process of working out a constitutional compromise acceptable to the country's various majorities. While the size of delegations to such a conference will probably have to be fixed, I have taken the position that legislatures should be free to determine how they are represented within a given size at a constitutional conference, including whether their delegations should include non-elected persons.

However, for my own part, and without meaning to flatter you, I would prefer that my own province, Ontario, be represented by a good cross-section of yourselves, with all your faults, rather than those self-proclaimed paragons of virtue and representativeness, the unelected.

1110

Mr Malkowski: Thank you for your very interesting presentation this morning. It is a very challenging discussion and from the proposals that are coming, I am sure we are going to refer to your paper a lot. I know that in Meech Lake there were a number of mistakes, so I would like to ask you a couple of specific questions.

How do we go on protecting the social and economic rights of Canadians in the charter then, or in the Constitution? You talked a little bit about that. Perhaps you could elaborate and also advise us how we develop a responsible system to ensure that people have their social and economic rights met. How do we go about this?

Dr Russell: The fundamental way of going about that is called democracy, electing governments that care about these matters and seeing that they deliver the right programs. I am very impatient with citizens today in democracies who want social and economic justice guaranteed in a piece of paper called a constitution. I do not believe in that kind of democracy.

I believe in a democracy where these issues are fought out and debated in elections, and those who want improvements in social-economic policies vote for governments that will deliver them. At the same time, I am not opposed to stating in a constitution some broad objectives of individual wellbeing and charging an institution, such as a national senate, to measure sharp deviations from those. But as to the actual delivery of social and economic programs, I think that should be done through the democratic process as well as debating the level and depth of those programs.

Mr Harnick: We have heard from a number of experts and you are all brilliant and I wish you would all agree. It would make our job a lot easier. We have heard from Professor Crispo and Professor Morton who believe in an asymmetrical federalism. Professor Hogg does not believe in that. I do not know if I am 100% certain in saying that

you would agree with Professor Hogg, but when we look at the division of powers and the way that division of powers must ultimately be enumerated, is it possible to enumerate a division of powers that would give the province of Quebec the "distinct society" protection it desires without having a "distinct society" clause in the Constitution?

Dr Russell: Yes, I think it is. The approach I recommend in these matters is to avoid big abstract phrases like asymmetrical federalism or decentralization, and be tremendously practical and look at things one at a time and in a very tangible way.

For instance, on Quebec, I would look very tangibly at what kinds of security for their culture is important for them, and talk to them about it. You do not have to guess. You can read what they have written about it and, for heaven's sake, talk to some of their legislators about it, presumably those who want to go on as part of Canada, and figure out what they need.

They already have some special status in our Constitution. For instance, in 1982, those changes that Mr Trudeau's government is so rightly associated with gave Quebec special status in the area of the language of education as it applies to new Canadians. Quebec does not have a guarantee for new Canadians whose first language is English that pertains in other provinces. It seems to me we survived that. The reason Quebec was treated specially there was that it has a great fear about the change in its culture if new immigrants there are not put into the French school system. That is part of their security need.

I would look at it very practically.

In 1867, we built in a number of other special status clauses for Quebec, including protection for its special civil code. Section 94 gives special status to Quebec laws in the area of property and civil rights. They must always be under provincial jurisdiction whereas—this is one area where other provinces can delegate or give power to Parliament. That again was done for practical reasons.

I would just caution against these big slogans. "Are you for asymmetrical federalism?" "Are you for decentralization?" Look at the problem and see if you can get a solution the different majorities of Canada can live with and accept, and not get too hung up on abstract, theoretical models, if that is any help.

Mr Curling: Both professors in the last four to five minutes have given us a lot of food for thought and direction. I was extremely impressed also with your presentation. In just about the third paragraph you said something that actually woke me up, about continued unity with Canada. When you spoke of Quebec, you say "must have a ghost of a chance of being acceptable" to the majority not only of Quebec but everyone else. In your paper you presented ways in which we can go about it, all those details about how we can do that. But the question came up, are we then blocked into trying to do something in such a time frame that it is impossible to assess all of that, to educate, to inform the constituency or the citizens of this country, in order to come up with a proper or as near as possible a proper Constitution? Do you think the time frame is too short?

Dr Russell: No, I do not. I think most of the issues that are going to end up on the table are ones that are pretty well known to the various Canadians who have now been involved in debating the Constitution. One thing to bear in mind, Mr Curling, is that we are now the Olympic gold medalists in having public discussions of constitutions. There is no other country in the world where so many of its citizens at all levels, its media and its elected politicians have debated and discussed their Constitution. We are not novices; we are getting to be real pros. We are not going to be doing a new Constitution. We are going to be dealing with a half-dozen problems or so: the spending power, the Senate, and so on in which we have a lot of experience.

I think if we are making progress and particularly next spring—there are signs we are getting close—we are working towards an accord where there is a ghost of a chance of satisfying the different majorities: the aboriginal majority, the Quebec majority, the rest of Canada—as I call it—majority. I do not think our politicians are incapable of exercising leadership. By that I mean I think they can say, and I refer here particularly to Mr Bourassa in Quebec who is the one Premier facing a deadline, that if real tangible progress is being made, he can turn to his electorate and say: "Hey, we're getting somewhere. We've got some problems but we're getting somewhere." I think he can get us into overtime if that is necessary. It will require skills of leadership but I think they are there.

Ms Carter: I would like to add my appreciation of what we have heard so far this morning, as Mr Curling said, the food for thought that we require. I was particularly interested by Mr Russell's mention of the environment in this context because I think we should all be aware that if we dream for Canada's future and set up frameworks but we do not solve some of our global and local environmental problems, that is what they are going to remain, dreams. We are going to be faced with all kinds of emergencies.

I understood you to say that you thought a reformed Senate might have a part to play in this field. It seems to me that most environmental issues are very much bound up with other things, for example, transport, housing, energy, farming, you name it. It is something that is involved in almost anything that a government, or for that matter individuals, can do. I wonder if you would enlarge on that a little.

Dr Russell: I am glad you raised it because it is the area of government policy that is of most immediate interest to me, and that the aboriginal question. But my number one point, and I think you would agree with it, Ms Carter, is that these environmental problems today cannot be divided up into provincial and federal jurisdictions. Just think of something as basic as waste management. To say that local governments have no responsibility in that area would be madness. But to say that the federal government, the government of a large nation like Canada should have no interest or concern with global warming and those massive problems that affect our whole planet would be ridiculous. I am suggesting that in a revitalized Senate it be given a function for environmental surveillance that particularly looks at those problems that transcend local boundaries.

One obvious one is acid rain. It is clearly a problem no provincial jurisdiction can deal with adequately, and there are many others.

1120

I might tell you just a little anecdote about Quebec. I went to the meeting of the Quebec Liberal Party as an observer when it debated the Allaire report. I remember particularly when it got to the proposal to amend Allaire on environment. Allaire says environment should be exclusively provincial. That is in the Allaire report. The amendment which came from several constituencies in Quebec was to make it a shared field of jurisdiction. I remember a young Liberal getting up to a microphone and speaking passionately for the amendment on the grounds I have just made. She was an environmentalist. She was also a Liberal.

I remember watching the Minister of the Environment in Quebec sitting on his hands a few seats away and never going to the microphone, and then having the question called and the amendment defeated. I went up to several of the young Liberals I knew as students and said, "My goodness, I could understand a lot of what went on here today, but why would you think you could deal with the environment entirely on a provincial basis?" They said, "Well, we had just decided, as a strategy in our caucus, that all motions dealing with powers would have to be defeated, that we'd have to just accept Allaire as it is," but they kind of winked.

I mention that because I do not think intelligent young Liberals in Quebec like that could really believe you could have a national government in a country like Canada that said, "We've got nothing to do with the environment." I do not think they mean that. I think that is clearly an example of a negotiating position, not a final one.

Mr Offer: Thank you for your presentation, Professor Russell. Generally we hear two types of presentations, one that deals with the devolution or transference of powers to the provincial government, and second, a whole other series of presentations which talk about specific aspects of the Constitution and how they should be changed. I put in that group aboriginal issues, socioeconomic—Senate reform. On the issue of the devolution of powers, is it your opinion a constitutional amendment is necessary in order to potentially deal with that issue?

Dr Russell: No, I do not see a great interest outside of Quebec in the devolution of power. One thing that I think the Spicer committee and its feeling of the public pulse tells us is that outside of Quebec there is not a great interest in taking powers away from Ottawa and transferring them to the provinces. I do not see why we should do that if most Canadians do not want it. I do not know governmental leaders who particularly wanted it at either level. Why mess up our Constitution? Just because if we have to do something for Quebec, we have to do it for everybody else? That seems to make no sense whatsoever. I am very much of Mr Hogg's persuasion that we should find some ways of making the division a little more flexible.

He has given the example, and I repeat it to you, of the spending power. I think it would be an easy thing to write into the Constitution that provinces that want to control federal spending in their own areas of jurisdiction—we are

not asking for any new jurisdiction—that want to be able to say when the federal spending power can encroach on their jurisdiction, should be able to say so. They should have that option. Quebec may be the only province to exercise that option, but one or two other provinces may want it.

Mr Offer: Mr Chair, do I have time for a short supplementary on that?

The Acting Chair: I am afraid we really cannot. We are a bit behind schedule and I think we need to ask for Mr McRoberts to come forward now. Thank you very much, Professor, for coming here. We are indebted to you again for the fine work you are doing.

Dr Russell: You are most welcome. I wish you success in your committee's endeavours.

KENNETH McROBERTS

The Acting Chair: I now ask Professor McRoberts to come forward and introduce yourself for the record.

Mr McRoberts: I am Professor McRoberts. I am in the political science department at York University and I am also now the director of a centre for research on Canadian studies at York University called the Robarts Centre for Canadian Studies.

The Acting Chair: We have an hour, I believe, so we hope you will leave a good amount of time for questions.

Mr McRoberts: I understood I had half an hour, but I am quite prepared to take an hour.

The Acting Chair: I am sorry; my mistake. It is half an hour.

Mr McRoberts: I prepared a presentation which I presume will take about 15 minutes or so to read. I will do that and then of course answer the questions you wish to pose to me. I believe copies of these remarks have already been distributed to you.

In my invitation to appear before this committee, I was asked to address my remarks primarily to your questions dealing with "Roles of English and French Languages". While I fully intend to speak to these matters, I would also like to address some of the questions dealing with "Quebec's Future in Canada and the Roles of the Federal and Provincial Governments."

It seems to me that language policy and the Quebec question are indissolubly linked. After all, it was only with the rise of a new nationalism in Quebec in the 1960s that many English-speaking Canadians developed a concern about language rights in Canada. Recognition of the French language minority rights became viewed as a necessary response to Quebec nationalism. In fact, there developed a belief in some quarters that recognition of language rights could be a sufficient response to the Quebec question. Time clearly has shown that it cannot be. It seems to me that the present constitutional crisis can only be resolved through squarely addressing both sets of issues.

Moreover, it seems to me that the way in which we frame a language policy for Canada, including Ontario, cannot ignore developments in Quebec. Language policy cannot be properly understood solely in terms of the needs and rights of the linguistic minorities. The Quebec case

requires that attention be paid to the needs and concerns of a linguistic majority.

The very designation of French as a majority language in Quebec is itself somewhat arbitrary. The fact remains that French is very much the minority language in Canada as a whole, let alone North America. This fact has imposed responsibilities upon the Quebec government to protect and promote French in Quebec, majority language as it may be. Seventeen years ago these responsibilities led the Quebec government of Robert Bourassa, a strongly committed federalist, to abandon formally official bilingualism through Bill 22. The oft-criticized Bill 101 of the Parti québécois government merely reinforced this already established new direction. It seems to me that these developments in Quebec constrain the kind of language regime which might be appropriate for Ontario.

I will now discuss each of these questions in turn.

First of all, with respect to "Roles of English and French Languages," it seems to me that the central problem with language policy in Canada is that we have tended to presume that the formula adopted at the federal level, official bilingualism, should also be the model for provincial governments, yet in only one province, New Brunswick, is the official language minority of the same demographic order as at the federal level.

In most provinces the minorities are relatively small. Even Ontario's French speakers, who in numerical terms constitute Canada's second largest official minority, represent about 4% of the provincial population. Elsewhere, the minorities are smaller, in proportions as well as in numbers. Under these conditions, movement to official bilingualism or linguistic equality in general is bound to produce strong opposition. The opposition is all the greater given the fact that Quebec, which has the largest number of minority language speakers and the second largest proportion, has moved away from official bilingualism.

For their part, supporters of official bilingualism in English Canada have often felt betrayed by Quebec. After fighting a decidedly uphill battle for linguistic equality in their own province, usually in the belief that Québécois were looking for precisely such a gesture, they find Quebec moving in the opposite direction. Yet whatever their concern about the fate of the francophone minorities, Quebec francophones have shown no weakening in their resolve to affirm the pre-eminence of French within Quebec. As they clearly demonstrated through their support of Bill 178, they are adamant in their defence of the integrity of Bill 101.

For these reasons, we need to treat language issues in a way which is more closely linked to political realism and the sociology of language. The provincial governments should provide support for francophone minorities where they are indeed viable—clearly viability varies enormously from province to province—and they should provide support which is meaningful to the needs of their particular francophone minority. At the same time, we need to recognize the legitimate concern of Quebec francophones to protect and promote French within Quebec.

1130

With this in mind, I will now respond to each of the questions the committee has posed on language policy.

First, any Canada clause should indeed recognize linguistic duality as a fundamental characteristic of the country, but this should be done in a way which recognizes the reality of language use in Canada. It seems to me that the duality clause of the Meech Lake accord would meet this objective, especially as it was originally formulated. You may recall it was a convoluted phrase, to be sure, but I think it did accord quite well with the pattern of language use in Canada. It referred to "the existence of a French-speaking Canada, centred in Quebec but also present elsewhere in Canada; and an English-speaking Canada, concentrated outside Quebec but also present in Quebec" which "constitutes a fundamental characteristic of Canada."

Second, with respect to protection of minorities, it seems to me the focus should be upon services and control of distinct institutions rather than upon formal equality within governmental institutions. On that basis, it is not clear to me that it is necessary that Ontario should be declared officially bilingual. In fact, to do so could be construed as an attempt to undermine the legitimacy of Bill 101, which clearly is an essential condition for continued support of the federal order in French Quebec.

By the same token, reciprocal intergovernmental agreements may provide a more effective basis for ensuring minority protection than constitutional entrenchment. Such agreements are likely to be more politically feasible. More important, they offer the flexibility needed to accommodate the wide interprovincial variations in the situations and needs of linguistic minorities. For instance, an interprovincial agreement among Ontario, Quebec and New Brunswick not only would embrace 98% of Canada's official-language minorities; it would entail a much wider range of services than can be provided elsewhere.

The third question posed by the committee deals with provincial jurisdictions, "If the province of Quebec receives jurisdiction over all matters relevant to language and culture, should other provinces receive similar powers?" Strictly speaking, it is not clear how Quebec could be given "jurisdiction over all matters relevant to language and culture." Quebec could not exercise jurisdiction over language practices within federal institutions, nor over issues that must necessarily fall within federal jurisdiction, such as regulation of interprovincial trade and commerce.

However, Quebec could be given complete control over regulation of language within its own jurisdictions. In other words, it could be freed from its obligations under section 133 of the Constitution Act, 1867, and section 23 of the charter. A case could be made for eliminating section 133, since it pertains more to the global status of language in Quebec than to the specific situation of its linguistic minority. Eliminating section 23 is more problematic, since it does involve services to minorities. If section 133 is eliminated, so should Manitoba's requirements under the Manitoba Act, 1870. For its part, New Brunswick stands as a special case given the size of its official-language minority.

As for jurisdiction over culture, the primary issue would be federal support for cultural activities, as with the Canada Council, but federal agencies which are themselves involved in cultural productions, such as the National Film

Board or the CBC, might also be involved. A case could in fact be made for devolving to Quebec some or all of the French-language components of these various federal institutions, but it seems to me there is no comparable argument for handing the English-language components over to the nine predominantly English-language provinces.

Finally, "In the event of separation of the province of Quebec, would the constitutional position of francophone minorities in the rest of Canada change?" Official bilingualism probably would be untenable at the federal level, although it might well persist for provincial purposes in New Brunswick, given the demographic structure of the province. The best approach to ensuring protection of linguistic minorities would, it seems to me, in the context of Quebec sovereignty, be reciprocal accords between a sovereign Quebec and the governments of the rest of Canada.

Turning now to the question of the role of the federal and provincial governments and Quebec's future in Canada, it seems to me that in the last analysis it is the Quebec question which triggered Canada's crisis of national unity in the first place. This happened in the early 1960s, well before the most recent wave of western Canadian alienation was politically manifest. From that point forward all Quebec governments, federalist as well as *indépendantistes*, with the clear support of francophone Québécois, have pursued two central constitutional objectives: recognition of Quebec specificity, and second, expansion of the powers of the Quebec government.

Yet two decades of discussion produced a constitutional revision which bears no serious response to these objectives. In the Constitution Act, 1982, there was no recognition of Quebec's distinctiveness except for the restriction on application to Quebec of part of section 23, and there was no expansion of the Quebec government's powers. In fact, through the charter, they were curtailed. Thus the Quebec government did not need to be *indépendantistes* to reject the 1982 accord. In terms of Quebec's established objectives, the 1982 revision was no less unsatisfactory than the Victoria charter of 1971 which the Quebec government of Robert Bourassa refused to sign.

The Meech Lake accord sought to rectify this problem in what I viewed as a quite modest and balanced fashion. Clearly, any resolution of the present crisis will entail changes that go at least this far; probably they will have to go much farther.

Some English Canadians appear to have rejected the accord out of opposition to any explicit recognition of Quebec's specificity, no matter how carefully hemmed in the "distinct society" clause may have been. Clearly this is not realistic.

A more compelling objection was that the accord might have seriously weakened federal-level institutions. While not valid in the case of the Meech Lake accord, it seems to me this is a legitimate concern as we try once again to devise an accommodation of Quebec. Opinion surveys show that most English Canadians do not want major devolution of powers to the provinces. For that matter, the primary vehicle of western Canadian grievance, the Reform Party, has insisted that its concern is not with decentralization but increased participation at the centre. In fact,

there may well be support in English Canada for enhancement of the federal role in some areas such as education. On this basis, asymmetrical federalism clearly emerges as the only basis for accommodating both Québécois and English Canadian aspirations.

Turning now to your specific questions on Quebec and the federal-provincial roles, I will offer the following reflections.

First, regarding the division of powers, I have already indicated why I believe asymmetry to be the preferred formula. Within this formula, I would envisage the expansion of Quebec's jurisdictions in a number of areas where it has particular concerns not fully shared by the other provinces, most notably culture, communications, social policy and manpower and retraining.

Ideally, so as to preserve the integrity of the federal role in the rest of Canada, asymmetry would be achieved through an explicit allocation of powers to Quebec. If this should, however, prove to be politically impossible, as might well be the case given English Canadian insistence on equality among the provinces, then the powers should be made available to all provinces under the formula of concurrency with provincial paramountcy. However, so as to preclude provincial governments from exercising this paramountcy for frivolous reasons, it might be made subject to a device such as a popular referendum.

Second, formal recognition of Quebec's distinctiveness clearly is indispensable to any resolution of the present crisis. For most Quebec francophones, the "distinct society" clause of the Meech Lake accord stands as a benchmark by which proposals for constitutional revision will be evaluated. On this basis, the mere inclusion of a statement in an omnibus Canada clause which appears in the preamble may well be insufficient.

Finally, in the event that the Quebec question cannot be resolved within Canadian federalism, we all have an interest in moving as expeditiously as possible to a new relationship with Quebec. Presuming, as I fully do, that any movement of Quebec to sovereignty would be based upon the results of a properly conducted consultation of Quebec residents, it would be in the interests of the rest of Canada to accept the legitimacy of such a move. This was the implicit position of the Trudeau government at the time of the 1980 referendum and I understand this to be the import of the resolution on Quebec's self-determination adopted at last week's national convention of the Progressive Conservative Party.

By the same token, for purely pragmatic reasons, we should accept that Quebec's accession to sovereignty would be based upon the existing boundaries of the province of Quebec. While quite compelling moral and legal arguments can be mounted against such a position, the fact remains that to place in question Quebec's boundaries would be to open a debate which could escalate very rapidly and which has no evident basis for resolution. I believe that the clear interest of Canada without Quebec would be to focus negotiations on the quite complex matter of Quebec's political disengagement from the federal order, bearing in mind that both sides have an interest in the rapid resolution of the issues. At the same time, we should be seeking to undertake the types of reforms of federal-level institutions

that clearly would be necessary, given the greatly enhanced weight that Ontario would assume in Canada without Quebec.

My own view is that Canada without Quebec has over recent years acquired a new coherence as a political entity, thanks in large part to such initiatives as the Charter of Rights and Freedoms. There is no reason why this entity should dissolve upon Quebec's departure, provided that measures are taken to ensure a proper expression of regional forces and federal-level institutions. In the last analysis, in this situation, it seems to me Ontario's interest would lie with maintaining the coherence of the rest of Canada and with making the concessions that might be necessary to secure this.

At this point, having read my prepared statement, I am available to answer any questions you wish to pose.

1140

Mrs Y. O'Neill: This is a very detailed presentation. I am amazed that you tackled all the questions. Most presenters have not attempted to do that and you have done it in some depth.

You likely know that we met with Professor Réaume yesterday. In a nutshell, some of the things she said regarding protection for minorities did seem to be tied rather closely to services within communities, within provinces; social rights, however you want to describe it. She used our Bill 8 in application of that theory.

I am reading page 7 of your document and I would like you to try to tie in the comment I have just made with what you have said here regarding Quebec's powers. First of all, I think you have made a very good deduction, which most people will not write down, that there really has not been a serious response to all the concerns in the 20 years. Quebec has been coming to the table for 20 years and longer. The restrictions on the application of section 23 is where I guess I would like you to go, and then when you are talking about the curtailment of Quebec's powers through the Charter of Rights, Perhaps you could tie that in to what I have said. I am sure you are able to, after reading your brief.

Mr McRoberts: With respect to Bill 8, I think a couple of things in Bill 8 are especially useful. One is to promote bilingual services within the province, with services to be available in both languages. This in fact is a notion that the Royal Commission on Bilingualism and Biculturalism proposed back in the mid-1960s. The federal government incorporated this within the federal Official Languages Act, but was unable for various reasons to ever put it into effect. So I think this is an appropriate framework for legislation to deal with the question of services.

As I indicate, I think there is a final step that actually Ontario is quite close to making, which is to designate French and English as the official languages of the province. New Brunswick has done so. This is now reiterated within the charter. Within Bill 8 there is a statement that French and English are official languages with respect to the courts and education, so Ontario has in fact gone a long way down this road.

There still is the final step of declaring explicitly that both languages are official languages. My sense is it could

produce fairly strong political reaction in Ontario. We have already seen this in light of the movement to declare municipalities English only, and it is not clear to me that there would be a major benefit in doing so.

I think the focus should be on services, which is the primary thrust of Bill 8, and beyond services I think the focus really should be on control by francophone communities of their own institutions, for schooling, health and social services.

With respect to Quebec, I would insist—I think it is a fairly common argument—that the demands which the Quebec government, with widespread support in Quebec, has articulated since the early 1960s, focusing upon the status of Quebec within Canada, focusing upon the powers of the Quebec government, have not received a direct response. There was no enhancement of jurisdictions in the Constitution Act, 1982, at least in a way that responded to Quebec's concerns. There is the provision with respect to section 23, which Professor Russell already alluded to, by which the aspect of the protection of minority-language education having to do with the children of immigrants in the case of Quebec is dependent upon approval of this by a resolution of the Quebec National Assembly.

Leaving that aside, there is little else that is specific to Quebec. The fact remains that the provisions having to do with mobility in the charter could be seen as curtailing the powers of the Quebec government. Quebec as a government did not gain anything in the Constitution Act, 1982, and I think it was quite clear on the part of those who were responsible for designing the federal proposal that in fact Quebec should gain nothing.

The argument, of course, was that there was a response to the concerns of Quebec francophones in terms of language rights in particular and reinforcement of the position of the francophone minorities in other provinces, but I would insist that this clearly was not sufficient. It is not surprising then that the Quebec government did not sign the accord, just as in the end it was not surprising that the Bourassa government did not sign the Victoria charter in 1971, claiming that it did not respond to Quebec's concerns for enhancement of provincial jurisdiction.

Repeatedly the issue has been raised in constitutional discussions, responding to what Quebec has been explicitly calling for, namely an enhancement of provincial jurisdiction. Each time, for whatever reason, we have avoided doing so and the problem remains. The Meech Lake accord, I would still argue, was a quite limited response to Quebec's concerns. There was, to be sure, the "distinct society" clause, which at least dealt with this contention that there should be some recognition of Quebec's distinctiveness. There was a reinforcement of what already existed by way of provincial participation in immigration and there was protection with respect to the use of the federal spending power to which Professor Russell alluded. It becomes quite disconcerting if for the rest of Canada this should be unsatisfactory, because I find it hard to imagine a kind of response to Quebec which does not deal with the question of the division of powers.

Ms Carter: I am just wondering how much detailed thought has gone into this problem of asymmetry, because

it seems to me that if that could be accommodated in some democratic way, then that might be the way out of the problem, since most of Canada obviously does not want the greater provincial independence. As to the demand that might put on us, would they require a greater adjustment in the Constitution than might be feasible? The kind of thing that comes to my mind is if we had some kind of compromise where there was almost a two-tier government, the top level including Quebec and then a level that was just the other provinces, as it were, so that we did not get our majorities mixed up on the different issues, or some way in which consensus could function on different issues.

Mr McRoberts: Yes. We do in fact have a great deal of asymmetry already within Canadian federalism. If we look at the pattern of federal-provincial agreements, there is a whole host of agreements the federal government has with some provinces that do not involve other provinces. The federal government maintains provincial police, the RCMP, in eight provinces, excluding Ontario and Quebec. So at that level, in terms of executive federalism, federal-provincial agreements, there is an enormous amount of asymmetry.

What might be involved here is a question of the actual exercise of legislative powers in a way that would exclude the other level of government. The formula—I think the appropriate one—would be one which is often referred to as concurrence with provincial paramountcy by which jurisdictions would be assigned to both levels of government, with the provision that a provincial government could seek to exercise exclusive jurisdiction within it.

The difficulties that have often been raised with respect to the institutions of the federal government would be—this was the classic position of Pierre Trudeau when it came to any kind of distinct status for Quebec—what happens in the House of Commons when a bill is put before the House which does not apply to all the provinces, which applies only to the provinces that have not in this case assumed exclusive jurisdiction in an area? His contention was that the situation would be totally untenable. Would members of Parliament from the provinces not participating in such an agreement, not affected by the bill, vote or not?

In point of fact, we have had a situation repeatedly in which a bill was put before the Canadian House of Commons which did not apply to one province, namely Quebec. We have the precedent going back to 1964 by which Quebec has its contributory pension scheme, the Quebec pension plan. The federal government, in conjunction with the other provinces, maintains the Canada pension plan in the rest of Canada. Bills have had to go forward dealing with the Canada pension plan, not applying to Quebec. Quebec MPs have voted on these bills. In fact, the Canada pension plan has been administered by two different MPs from Quebec, Marc Lalonde and Monique Bégin, and there does not appear to have been a major concern about this.

It is probable that if this kind of asymmetry were quite limited, the kind of institutional difficulties that have been cited would not be insurmountable. There may be a point at which it becomes so extensive and it is so often that bills are put before the House that have to do with some provinces

and not others, with all the provinces but Quebec, that the situation would become difficult.

Those may be the grounds upon which we would want to move to a system that has been proposed at various points over the last 20 years, by which there would be a legislative body dealing only with the rest of Canada and not with Quebec. We would have a kind of bifurcated federalism in which there would be a common government dealing with the country as a whole and a second government dealing only with Canada without Quebec, which would have extensive jurisdictions, all of which in the case of Quebec would be exercised by the Quebec National Assembly. But we have not reached the point yet, certainly in our limited application of asymmetry, where there appears to have been a serious institutional difficulty.

1150

Mr Offer: In the discussions I think it is clear that as we deal with a number of issues, there is a certain importance to symbolism: what it means, how it feels. In your opinion, is there any proposal which would contain the phrase “distinct society” acceptable to the provinces outside Quebec? On the other hand, is there any proposal which does not include that phrase acceptable to the province of Quebec?

Mr McRoberts: The problem is that we had the Meech Lake accord and the Meech Lake accord had this phrase “distinct society.” Quebec francophones are very much aware of this. They are also very much aware, and I think correctly believe, that it was this provision in the Meech Lake accord that led to its widespread opposition in English Canada. I think this is borne out in surveys, that this particular provision, “distinct society,” is the one that caused the greatest amount of distress in English Canada.

The fact of the matter is that the “distinct society” clause was very carefully hedged in. There was a preceding clause referring to linguistic duality in Canada. There was a subsequent clause stating the “distinct society” clause should not have an impact upon the division of powers, securing powers for provinces or the federal government that they would not otherwise have. One could explain these various provisions to English Canadians, but they really did not seem to have any impact, because, as you point out, symbolism is very important. So it seems that it was this phrase “distinct society” which caused the difficulty.

I have difficulty imagining that there could be a basis for resolution of the constitutional crisis, a package coming from the federal government with the support of all the other provincial governments but Quebec, which does not have the phrase “distinct society” in it which is somehow acceptable to Quebec. I think this becomes sort of the benchmark by which people in Quebec are going to assess what is done. There is a continuing sense of humiliation, a sense that they went in in a fairly straightforward fashion in negotiating the Meech Lake accord, outlining five minimal positions. There was an agreement to these positions on the part of all the provincial governments and then there was a backtracking. I think it is going to be very hard for francophones in Quebec to forget this and to accept that this damage, as it were, could be repaired by a new accord which does have this famous phrase.

It may be that English Canada is going to have to come to terms with the phrase. I think, and this is quite evident, that what is going to be needed is some sort of package which at the same time does address the concerns of English Canada, and in particular addresses the concerns having to with federal level institutions and reform of the Senate. It may be that in that context, when "distinct society" is linked to an effective reform of the Senate as opposed to the promise of maybe this will happen, there will be more receptivity in English Canada to the whole package.

Mr Bisson: I would like to just carry on with the line of questioning Mr Offer was putting forward in regard to symbolism, because it seems to me, by virtue of being involved in this committee and reading the Constitution and dealing with the whole issue, that I am now coming to the realization that many of the aspirations that Quebec is talking about are already afforded to it under the present mechanisms that we either have through the practice by which we do government in Canada or through the Constitution as it stands now, and that the major problem is basically trying to get formal recognition for that under either a Canada clause or whatever mechanism that might be, and the actual fact is that there is resistance outside Quebec for the formal recognition.

I guess what I am getting at is two things. Really, I guess the difficulty we have is, what do we do as a nation in order to reconcile or to bring together the people on both sides of this issue?

I found it interesting that at the beginning of your presentation you talked about the aspirations of western Canada in regard to how they see the possible solutions, how they see their regionalism, problems in regard to the federal government. You are advocating that what they are asking for is more representation at the centre. I would tend to, not strongly disagree, but I interpret that a little bit differently. I guess what I am asking you is, what advice can you give to me and to the rest of the committee as to what we can do to try to get people to understand that really the solution to this thing, if we all want to work at it honestly, could be arrived at, because a lot of the mechanisms are already there?

Mr McRoberts: Yes, and intellectually it is not that hard to spell out what would be the basis for a constitutional resolution; it is just much more difficult to see how it can be secured.

I think the symbolism is important. Maybe the key would be to avoid trying to resolve everything within a single formula, which I think it is fair to say was the approach that was adopted in 1982. It was within the Trudeau vision by which one has a charter which establishes language rights and on that basis one can ignore other questions, especially the Quebec question. I think this time around, clearly we are going to have to address several different sets of issues, and it makes for a much more complex package that cannot be reduced to a single formula, but it is the one that may well be satisfactory.

The Acting Chair: Mr McRoberts, we want to thank you very much for your very full presentation to the committee, and at this point we will recess, to resume at 2 o'clock this afternoon.

Mrs Y. O'Neill: Mr Chairman, before we recess, could you please explain why the presentation at 2 o'clock is to last one hour? Is that correct?

The Acting Chair: No, one and a half hours.

Mrs Y. O'Neill: That is very unusual.

The Acting Chair: Yes. This is the information I have received, Mrs O'Neill.

Mrs Y. O'Neill: Was that a request by the presenters?

Mr Bisson: It was asked on the part of the presenters to allow more time because of their length of their submission. As well, there was some discussion in regard to the length of that presentation on the part of the subcommittee, I do believe, and it was agreed to do so.

Mrs Y. O'Neill: I could have missed that. Okay.

The Acting Chair: I believe also Mr Vegh afterwards will be a half-hour presentation, so we will rise at 4 o'clock, if we get started on time. This committee is now recessed, to resume at 2 o'clock this afternoon.

The committee recessed at 1158.

AFTERNOON SITTING

The committee resumed at 1406.

ASSOCIATION CANADIENNE-FRANÇAISE
DE L'ONTARIO

Le Président suppléant (M. Drainville) : Monsieur Tanguay, voulez-vous faire la présentation de vos collègues, s'il vous plaît ?

M. Tanguay : Ça me fera plaisir, Monsieur le Président. Mais si vous me le permettez, au tout début de notre présentation, l'Association canadienne-française de l'Ontario aimerait prendre cette occasion pour vous féliciter de votre ascension, si on peut ainsi dire, au poste de Président de ce comité spécial sur le rôle de l'Ontario au sein de la Confédération. Je crois que nous sommes un des premiers groupes à vous rencontrer officiellement.

L'ACFO, l'Association canadienne-française de l'Ontario, prend l'occasion de vous souhaiter bon voyage et bon travail dans le reste du mandat du comité.

Le Président suppléant : Merci.

M. Tanguay : J'aimerais prendre cette occasion, avant de commencer, et comme vous le disiez tout à l'heure, de présenter l'équipe qui m'accompagne aujourd'hui, parce que l'Association canadienne-française de l'Ontario, quoique ce soit sa deuxième occasion de venir échanger avec votre comité, croit qu'il est d'une importance capitale à notre présence collective. Une fois que j'aurai présenté mes collègues, vous comprendrez pourquoi.

J'aimerais commencer par M^{me} Georgette Sauvé, qui est la vice-présidente de l'Association canadienne-française de l'Ontario, mais qui joue un rôle tout à fait spécial : elle représente toutes les ACFO régionales. Comme vous le savez, lors de votre premier voyage à travers la province, vous avez réalisé que l'ACFO était présente un peu partout.

En deuxième lieu, j'aimerais vous présenter M. Paul Lachance de Windsor. Il est vice-président, lui aussi, de l'Association canadienne-française de l'Ontario, mais il représente les 21 associations affiliées à l'ACFO, comme vous avez pu le constater aussi.

En plus, l'Association canadienne-française de l'Ontario, reconnaissant l'impact national que les recommandations de votre comité pourront avoir à un moment donné, est allée demander de l'aide d'avisers constitutionnels très compétents tout au long de l'évolution du dossier qu'elle pilote à ce moment-ci au sujet de la position des francophones de l'Ontario dans toute la dimension de cette redéfinition du Canada. Remarquez bien qu'on retrouve cette compétence dans la jeunesse. J'aimerais vous les présenter à ce moment-ci.

À ma gauche vous avez M. Gilles Levasseur, un jeune avocat qui se passionne par toute la dimension de notre constitution. À ma droite, j'ai le plaisir d'être accompagné de M. Yves LeBouthillier, qui lui aussi est un jeune avocat dynamique, constitutionnaliste, j'ose dire, à plein temps, et de ces personnes qui nous aident, qui nous permettent de vraiment faire une réflexion approfondie du problème qui est en avant de nous autres.

Je m'en voudrais de ne pas mentionner, à l'arrière-plan, notre directeur général, M. Fernand Gilbert qui, comme vous le savez, a un travail de coordonnateur qui permet à la communauté franco-ontarienne de se rencontrer, de se réunir et de se réaliser. Alors, le rôle de directeur général que M. Fernand Gilbert a à jouer est quand même très important.

M^{me} Suzanne Meunier, de son côté, qui est à l'arrière-plan, est agente de la recherche et de liaison à l'Association. Elle permet de faire la synthèse de toutes nos pensées et elle appuie, en fonction du travail, ce que nous sommes en train de faire.

En dernier lieu, j'aimerais faire mention que M. Yves Rouleau, qui est notre agent en communications, nous accompagne aussi. Ceci est pour les présentations. Je vous remercie.

Le Président suppléant : Merci, Monsieur Tanguay. Comme vous le savez, le comité vous a accordé une heure et demie pour présenter votre exposé. Il serait utile que vous réserviez une période de temps considérable pour les questions et les réponses, s'il vous plaît.

M. Tanguay : Avec plaisir.

À l'heure où l'avenir du Canada semble en péril, les Franco-Ontariennes et Franco-Ontariens, de concert avec leurs concitoyens canadiens, ont saisi l'occasion de jouer un rôle prépondérant dans la définition de leur place au sein de l'Ontario et du Canada. Reconnaisant l'importance de saisir l'exceptionnelle opportunité qui s'offre à la nation toute entière, l'ACFO, en étroite collaboration avec ses organismes membres, a vivement encouragé cette réflexion profonde au sein de la communauté franco-ontarienne.

Au cours de la dernière année, quelque 10 000 Franco-Ontariennes et Franco-Ontariens ont répondu de façon significative à cette invitation. En effet, leur implication s'est affirmée par une participation active à sept colloques tenus à l'échelle provinciale, en plus d'avoir répondu massivement à un questionnaire. Cette consultation s'est terminée par un Sommet de la francophonie ontarienne. Par ailleurs, quelque 165 mémoires ont été soumis à ce comité lors de sa tournée provinciale en février dernier. Mentionnons qu'un groupe de travail œuvre présentement à la rédaction du rapport de cette réflexion, qui sera disponible dès cet automne.

La communauté franco-ontarienne lance un message clair : le Canada doit être profondément redéfini, et cette redéfinition doit faire en sorte que les différentes composantes du Canada puissent s'épanouir pleinement. De plus, les Franco-Ontariennes et les Franco-Ontariens tiennent à s'inscrire dans cette redéfinition et à cerner le rôle important que peut jouer l'Ontario pendant cette période cruciale.

Les membres de la communauté franco-ontarienne se définissent d'abord comme des Ontariennes et des Ontariens francophones. Ils ne sont ni des assimilés potentiels ni des Québécois égarés ni des Canadiens errants. L'Ontario est leur province, et là, depuis plus de 350 ans, elles et ils y sont pour rester.

L'Association canadienne-française de l'Ontario considère l'éducation comme le secteur clé de son développement.

Par ailleurs, elle est d'avis que le taux élevé d'analphabétisme qui l'afflige prévaudra tant et aussi longtemps qu'elle ne détiendra pas, entre autres, la gestion pleine et entière de ses institutions d'enseignement.

La communauté est aussi d'avis qu'elle doit faire la promotion de la dualité linguistique canadienne et se doter de divers instruments afin de jouer de plain-pied son rôle dans toutes les sphères d'activité de la société. La reconnaissance officielle du français en Ontario, la création d'un réseau provincial de collèges d'arts appliqués et de technologie de langue française, la création d'une université de langue française et l'établissement par le gouvernement de l'Ontario d'un organisme indépendant chargé de veiller à l'application de la Loi de 1986 sur les services en français sont, entre autres, les leviers que la communauté juge essentiels à son épanouissement.

En général, les Franco-Ontariennes et les Franco-Ontariens souhaitent voir l'Ontario jouer un rôle de chef de file et de médiateur dans l'actuelle crise constitutionnelle. À cet égard, l'ACFO a développé une approche à deux volets : l'un est centré sur le Canada, l'autre sur la promotion de la francophonie en Ontario.

L'Association canadienne-française de l'Ontario réfléchit présentement aux modalités d'une restructuration fondamentale du système politique canadien. Le système fédéral actuel n'étant pas le reflet exact de ce en quoi consiste véritablement le Canada, l'ACFO croit qu'il doit y avoir un renouvellement du projet de société canadien.

1420

Cinq principes fondamentaux doivent guider, dans un premier temps, les Canadiennes et les Canadiens dans le renouvellement de la constitution du pays :

1. Écarter le principe de l'uniformité au profit de la reconnaissance mutuelle qui amènera la création d'une véritable fédération canadienne.

2. Reconnaître constitutionnellement les trois communautés nationales qui ont bâti le Canada, soit les Premières nations et les communautés francophone et anglophone, et affirmer que ce rôle historique et honorable qu'elles ont joué leur confère un statut égal.

3. Reconnaître constitutionnellement le droit à l'égalité des chances des communautés nationales et le devoir des gouvernements de la promouvoir.

4. Reconnaître l'apport des générations successives de néo-Canadiennes et néo-Canadiens au développement de l'une ou l'autre des communautés susmentionnées.

5. Reconnaître et promouvoir la présence d'une représentation des communautés francophone et acadienne et des Premières nations aux négociations constitutionnelles.

Dans un deuxième temps, l'Association souhaite que l'actuelle réflexion permette de : consolider et renforcer les dispositions actuelles de la Charte canadienne des droits et libertés, particulièrement en ce qui a trait aux droits de la communauté francophone à l'éducation en français ; et amender l'article 23 de la Charte canadienne des droits et libertés, de sorte que le critère de la justification par le nombre ne s'y retrouve plus ; souhaite que les francophones puissent exercer leur droit à l'éducation en français, peu importe leur lieu d'origine ; et que le droit à la gestion

complète dans le domaine scolaire soit garanti aux communautés de langue officielle.

3. Reconnaître constitutionnellement à la communauté francophone le droit à une éducation postsecondaire et à la gestion complète des institutions qui en découlent.

4. Reconnaître constitutionnellement à la communauté francophone le droit à des services dans sa langue maternelle, que ce soit à la garderie ou dans les programmes d'alphabetisation et de formation professionnelle, et le droit à la gestion complète des institutions qui en découlent.

5. Reconnaître constitutionnellement la dualité linguistique comme une caractéristique fondamentale du Canada qui doit être protégée et promue par les instances législatives et exécutives des deux principaux ordres de gouvernement et des corporations publiques qui en sont issues.

6. Faire en sorte que les politiques reliées à la dualité linguistique tiennent compte des droits, des intérêts et des besoins de la communauté autochtone.

7. Reconnaître que les communautés nationales doivent participer à des ententes tripartites et gérer les structures politiques et administratives des services propres à leur épanouissement. De telles structures doivent être assurées d'un financement équitable.

8. Reconnaître que les communautés nationales doivent pouvoir conclure des ententes avec leurs différents gouvernements lorsque celles-ci leur sont expressément destinées. Elles doivent aussi participer à la mise en oeuvre de telles ententes conjointement avec le gouvernement en cause.

9. Reconnaître que le statut égal de la communauté francophone doit nécessairement se refléter dans l'organisation des pouvoirs, tant aux paliers fédéral et provincial que municipal.

En ce qui a trait au Québec, l'ACFO croit qu'il doit exister une reconnaissance distincte de la société québécoise. Le Québec est la seule entité politique en Amérique où un gouvernement provincial est élu par une majorité de francophones qui peut ainsi s'épanouir totalement en français. Bien que l'ACFO reconnaisse le besoin pressant d'un réaménagement du système politique canadien, elle souhaite que l'intégrité du Canada soit préservée en tenant compte du caractère distinct du Québec. Par ailleurs, les communautés de langue officielle doivent être protégées et promues, devenant ainsi des opportunités de développement pour le Canada tout entier.

Le fédéralisme constitue la dimension la plus fondamentale de la constitution canadienne, et celle dont on parle ordinairement le plus. Toutefois, la réalité est que le Canada n'est pas une vraie fédération, ce qui cause des frictions au Québec et dans l'Ouest canadien. Les réflexions de l'ACFO sont de nature à rééquilibrer le fonctionnement du système politique canadien. Il ne s'agit pas de subordonner le fédéral aux provinces, mais plutôt de permettre à ces dernières de participer au développement et au fonctionnement des politiques économiques, fiscales et monétaires du fédéral et de se protéger contre l'incursion de ce dernier dans les champs de compétence exclusives aux provinces.

Cependant, ces changements sont subordonnés aux éléments suivants de la constitution : la primauté de la Charte canadienne des droits et libertés ; le rôle du gouvernement fédéral de faire la promotion de la dualité linguistique ; et

son pouvoir général d'intervenir dans le fonctionnement de l'économie canadienne afin de garantir à toutes les Canadiennes et à tous les Canadiens un minimum de bien-être économique et social.

Trois grands changements pourraient être opérés en matière économique :

1. La création d'un organisme, dont les modalités restent à déterminer, pour regrouper les deux paliers de gouvernement afin d'établir un processus de consultation concernant l'élaboration, la rédaction et, dans une certaine mesure, la mise en œuvre des politiques économiques du gouvernement fédéral.

2. Une réorganisation de la Banque du Canada afin de favoriser une participation plus active des régions dans la prise de décisions des politiques monétaires de la Banque du Canada.

3. Une modification de l'article 121 de la Loi constitutionnelle de 1867, afin qu'il garantisse une plus grande mobilité économique des biens, des capitaux, des services et des individus au Canada.

Pour ce qui est des atteintes au principe d'un véritable fédéralisme, nous croyons que le pouvoir déclaratoire serait défini dans la constitution autrement qu'il l'est aujourd'hui et limité à des objets précis. Deuxièmement, le pouvoir résiduaire, dorénavant, ne serait plus spécifiquement attribué au fédéral ou au provincial, mais serait l'objet d'une attribution par un comité mixte de politiciennes et de politiciens des deux ordres de gouvernement et dirigé par un juge d'une cour supérieure. Troisièmement, on suggère l'abolition pure et simple des pouvoirs de désaveu et de réserve. Nous suggérons aussi la clarification de la théorie de l'intérêt national et de la dimension nationale.

En ce qui a trait aux institutions étatiques, ces institutions doivent être redéfinies en fonction des cinq principes fondamentaux. Ces institutions sont le pouvoir judiciaire, les institutions parlementaires et le sénat.

L'Association canadienne-française de l'Ontario examine attentivement les éléments suivants :

1. La création d'un comité mixte national composé des deux ordres de gouvernement et des différents barreaux canadiens afin de sélectionner les juges des cours supérieures, de comtés, de districts et d'archives.

2. La constitutionnalisation de la composition de la Cour suprême du Canada, dont trois juges provenant du Barreau du Québec et une représentation minimum de quatre femmes.

3. La création d'une cour constitutionnelle entendant exclusivement des causes portant sur le partage des pouvoirs ou lorsqu'une décision de nature constitutionnelle risque d'avoir des répercussions majeures sur une ou plusieurs provinces.

4. L'enchaînement constitutionnel de la liberté de vote du député et des limites d'une motion de confiance.

5. L'abolition de la convention constitutionnelle portant sur le secret du budget, permettant ainsi un véritable processus de consultation prébudgétaire.

6. Le pouvoir de taxer indirectement les biens et services qui relèvent de la compétence exclusive des provinces de sorte qu'il soit accordé aux provinces.

7. La transformation du sénat en une chambre de la fédération qui s'occuperait des affaires canadiennes se rap-

portant aux valeurs fondamentales du pays, aux régions, et au partage des pouvoirs. La chambre de la fédération serait élue, efficace et égalitaire, suivant une division régionale. De plus, la nouvelle chambre prévoirait une composition qui ferait en sorte de garantir une représentation des trois communautés nationales au sein de chacune des régions, sans partisannerie politique nécessitant, entre autres, une double majorité des groupes linguistiques dans les domaines affectant l'usage du français et de l'anglais.

1430

Par ailleurs, l'ACFO croit qu'il est nécessaire de bonifier la Charte canadienne des droits et libertés. Cette bonification doit permettre une plus grande protection des Canadiennes et des Canadiens et garantir plus aisément les droits et les libertés dont nous jouissons actuellement.

Enfin, pour discuter de ces changements et rédiger une nouvelle constitution canadienne, l'ACFO pense que le meilleur mécanisme pour y arriver demeure la tenue d'une assemblée constituante, en raison de sa grande flexibilité et de sa capacité d'adaptation aux besoins particuliers de ses participantes et participants.

En ce qui a trait à la promotion de la francophonie en Ontario, l'Association canadienne-française de l'Ontario recommande au gouvernement de l'Ontario :

1. D'octroyer des garanties à la communauté franco-ontarienne quant à sa participation aux négociations constitutionnelles amorcées et futures, tel que discuté lors de la rencontre avec le premier ministre de l'Ontario le 22 juillet dernier ;

2. de s'engager à renforcer les droits linguistiques de la communauté en adhérant aux articles 16 à 20 de la Charte canadienne des droits et libertés. À cet égard, souvenons-nous des déclarations faites par le premier ministre Rae en 1981 lorsqu'il siégeait à la Chambre des communes et à l'occasion de la campagne électorale de 1990 ;

3. de désigner l'ensemble du territoire ontarien pour l'application de la Loi de 1986 sur les services en français ;

4. de s'engager à établir des conseils scolaires de langue française partout en province ;

5. de s'engager à fournir à la communauté francophone des services égaux dans sa langue maternelle à la garderie, au postsecondaire ainsi que dans le cadre de programmes d'alphabétisation et de formation professionnelle ;

6. de proposer et de défendre le concept d'un élargissement des droits de la personne et des minorités, particulièrement les droits des communautés de langue officielle ;

7. de promouvoir la reconnaissance de la société distincte du Québec dans un cadre fédéral renouvelé ; et

8. de promouvoir l'adoption d'un processus permanent de modification à la constitution.

Voilà, mesdames et messieurs, l'état de la réflexion de l'Association canadienne-française de l'Ontario concernant son document Un Canada à redéfinir, la francophonie ontarienne à l'heure des choix. Avant la fin du mois de septembre, vous recevrez le texte détaillé des quelques idées émises devant vous aujourd'hui. Permettez-moi, en terminant, de vous rappeler les éléments centraux, en plus des principes fondamentaux de la réflexion de la communauté franco-ontarienne :

Selon nous, des modifications majeures doivent être apportées à l'économie, aux éléments qui portent atteinte au principe d'un véritable fédéralisme et, enfin, aux institutions étatiques. Monsieur le Président, membres du comité, merci de votre oreille attentive.

Le Président suppléant : Merci, Monsieur Tanguay. On va commencer avec les questions.

Mrs Y. O'Neill: I really have lost the number of the questions I have this afternoon. This is an extremely detailed brief. You have done an awful lot of thinking since you were here in the winter, I can see. I know everyone must have the number of questions I have, so I would like to confine myself to two or three things.

Maybe I will have to wait until September to get your paper, but I would like to know what your thinking is on your guaranteed presence at the constitutional table, particularly as we are talking about a provincial context. In conjunction with that, I would like to know what you mean by "permanent mechanism." Perhaps you could try to help us by confining that as much as possible to the provincial scene, as I say. Then I have one other small question, from your paper, on the aboriginals.

M. Tanguay : Premièrement, vous m'avez questionné en fonction de ce que nous voulons dire par «notre présence à la table constitutionnelle». En deuxième lieu, vous nous avez demandé — rappelez-moi — ce qu'on veut dire par «le processus». Pourriez-vous préciser ?

Mrs Y. O'Neill: A permanent process. I think that is at the very last part. I guess "permanent mechanism" is the actual term you have used.

M. Tanguay : Et la troisième ?

Mrs Y. O'Neill: If you want all three at the same time, I would like you just to comment on number 5, page 4. You were talking about the linguistic duality and at the same time taking into account the interests and needs of the first nations. I would like to know what your background thinking is on that point as well, if I may.

M. Tanguay : Excusez, si je prends deux petites secondes. C'est qu'à un moment donné, j'aurai peut-être à demander à une personne ou une autre qui est avec moi à la table de compléter mes pensées, etc.

Pour ce qui est de la présence de l'Ontario français à la table constitutionnelle, nous avons eu l'occasion d'en discuter très brièvement avec M. Rae lors de notre rencontre du 22. Ce que nous voulons, et ce que M. Rae nous a affirmé à ce moment-là, c'était une participation active. En d'autres mots, lorsque le premier ministre de l'Ontario aura à refléter une position ontarienne à la table fédérale, quelle que soit la composition de la table fédérale, nous considérons que, pour pouvoir parler pour l'Ontario dans son ensemble, le gouvernement de l'Ontario devra tenir compte de la voix franco-ontarienne et refléter cette voix franco-ontarienne. Nous attendons à ce moment-ci des communications avec le bureau du premier ministre afin de peut-être établir un mécanisme plus précis par lequel l'Ontario français pourrait participer de façon plus positive et plus active à toute cette dimension de la table constitutionnelle.

Pour ce qui est de votre deuxième point, en fonction du processus permanent de modification de la constitution

canadienne, je crois que vous faites référence à la présentation que nous avons eu l'occasion de faire devant la commission Beaudoin-Edwards. Je demanderais peut-être à M. Gilles Levasseur ou à M. Yves LeBouthillier s'ils veulent compléter à ce moment-là.

M. Levasseur : Ce qui arrive, c'est que l'ACFO a présenté un mécanisme de modification de la constitution qui reconnaît au départ quatre veto régionaux et, comme tel, les régions sont représentées. Ce qui arrive, c'est qu'il y a toujours un processus permanent qui est engagé par les politiciens pour pouvoir revoir la constitution.

Dans le rapport présenté à la commission Beaudoin-Edwards était mentionné une démarche qui s'inscrivait dans un temps limité; un an au maximum. Les périodes étaient très définies. Ce qui arrivait, c'est qu'il y avait des mécanismes qui permettaient de toujours engendrer ce processus-là à quelques étapes possibles de l'amendement constitutionnel. Alors, il y avait des dates précises et il y avait un mécanisme d'élaboré.

Il est important de comprendre que l'ACFO croit qu'il faut y avoir un mécanisme qui soit engendré par les politiciens, mais qui peut aussi être demandé par les individus eux-mêmes à travers les politiciens. C'était ça qu'on avait en tête. Pour bien le comprendre, il faudrait avoir la Charte, la feuille, pour bien saisir ce mécanisme-là. Comme tel, il y avait un mécanisme de veto régional avec une formule permanente d'établie qui corrigeait un peu ce qui était le problème actuellement de la formule d'amendement.

Mrs Y. O'Neill: No doubt you are going to have quite a bit in writing in your September document on that.

M. Levasseur : Oui, évidemment, et c'est parce que si je l'expliquais maintenant, ça prendrait au moins dix ou quinze minutes pour l'expliquer comme il faut et on mèlangerait tout le processus.

Mrs Y. O'Neill: No, we have a lot of people on the waiting list, I am sure.

M. LeBouthillier : Madame O'Neill, je crois que l'ACFO pourra vous faire parvenir une copie du document qui a été présenté à la commission Beaudoin-Edwards, avec le diagramme et tout.

Mrs Y. O'Neill: I have that one. Fernand gave one to me, thank you. Now the last question, on the aboriginals.

M. Tanguay : Votre dernière question était double, à savoir ce qu'on entend par la «dualité linguistique» dans le contexte canadien vis-à-vis des autochtones.

1440

Mrs Y. O'Neill: No, just one. I just wanted you to comment on the fifth point you made on page 4.

M. Tanguay : J'ai un texte tout à fait spécial qui est différent du vôtre.

Une des valeurs fondamentales que nous défendons, c'est la reconnaissance des trois communautés nationales, à savoir les autochtones, les francophones et les anglophones. Nous savons très bien que dans le contexte canadien actuel, nous reconnaissons la dualité linguistique, à travers la Charte canadienne des droits et libertés. Mais d'autre part, une nouvelle dimension qui est en train de se

synthétiser dans la réalité canadienne, c'est la vraie reconnaissance de la communauté autochtone.

Je crois que, comme communauté franco-ontarienne, il est trop tôt, à ce moment-ci, pour dire des autochtones certaines choses en fonction de la dualité linguistique ou en fonction de leur langue. Il revient à cette communauté nationale autochtone la responsabilité de clarifier, sur le plan linguistique ou tout autre, de nous dire à nous, Canadiens, quelle sera la place ou quelle sera l'importance de cette dimension linguistique qu'ils veulent qu'on reconnaisse.

C'est pour cette raison que, dans le moment, l'ACFO présente trois communautés nationales reconnaissant la dualité linguistique actuelle de notre pays mais, en même temps, en gardant cette porte ouverte à cette nouvelle dimension autochtone qui va sûrement, dans les prochains mois et les prochaines années, se concrétiser davantage. Ce n'est pas à nous de dire aux autochtones, mais bien aux autochtones de nous le dire.

Mrs Y. O'Neill: I think the aboriginals would be very happy with your statements.

M. Bisson: J'ai une liste d'environ 20 questions que j'ai écrites, mais je ne pense pas qu'on va avoir le temps de passer à travers le tout. Il y a une couple de points que vous avez faits que j'aimerais aborder. Si n'importe qui représentant l'ACFO aujourd'hui avait quelque chose à dire... À la page 7, sur les institutions étatiques, vous avez parlé de la création d'une cour constitutionnelle. Pourriez-vous expliquer un peu plus ce que ça veut dire, et est-ce que ça veut dire ce que moi je pense que ça veut dire ?

M. Levasseur: Est-ce qu'il est possible que vous nous définissiez un peu ce que vous entendez pour qu'on puisse vous répondre ?

M. Bisson: La manière de laquelle vous avez fait la proposition, c'est qu'une partie du processus serait de créer une cour constitutionnelle qui serait responsable d'étudier les questions quand ça en vient aux divisions des pouvoirs.

M. Levasseur: Oui.

M. Bisson: Pourriez-vous expliquer ça un peu plus ?

M. Levasseur: Ce qui arrive, c'est que depuis l'engorgement d'une charte des droits, les tribunaux canadiens sont engorgés. Surtout à la Cour suprême il y a un engorgement. Bon, on a prévu un mécanisme de composition de la Cour suprême : trois juges qui viennent du Barreau du Québec et un minimum de quatre femmes. On veut quand même une représentation de ces groupes-là dans les décisions constitutionnelles parce que ça touche le Québec et les autres sociétés.

Alors, dans toute matière qui porte sur la Charte des droits ou sur le partage des pouvoirs, les articles 91 et 92, ou qui aurait un impact beaucoup plus large qui toucherait à l'ensemble du droit constitutionnel, le droit étatique, la cause serait référée à la cour constitutionnelle qui, elle, serait spécialisée dans la possibilité d'étudier ces causes-là et de prendre une décision sur ces thèmes. C'est spécialiser la cour pour vraiment dire, «Nous, on est experts dans cela et on a un rôle à jouer et on va décider en fonction des principes qu'on a établis».

M. Bisson: Une des affaires qu'on a entendues fait affaire avec une couple de présentations des experts. Je vais revenir un peu à la Charte des droits parce que je pense que ça tombe un peu dans le même plat. Un des problèmes qu'on a, c'est que sous la Charte des droits, l'interprétation de la question de la Charte des droits est souvent faite par ceux qui ont la possibilité de revendiquer leurs droits devant la Cour suprême. Jusqu'à un certain point, la Charte nous ôte des droits. Ce qui revient à la question que, quoiqu'il arrive avec ce que vous êtes en train de représenter là, jusqu'à un certain point ça ôte la capacité des politiciens, eux et elles, d'être capables de définir ce dont le pays a besoin selon la manière dont on se développe en tant que pays.

J'essaie de dire que dans le passé, les 120 ans qu'on est ici, les gouvernements fédéral et provinciaux ont réagi de manière à être capables de répondre autant aux besoins de la population. Un des problèmes avec une charte des droits et un peu avec cette question-là, c'est qu'on tombe, jusqu'à un certain point, dans les mains des avocats et des cours.

M. Levasseur: Oui, d'accord. Alors, c'est vrai qu'il y a une «judiciarisation» de l'État ici parce que ce sont les tribunaux, en fin de compte, qui vont décider quels sont les droits et libertés dont on jouit et comment on peut définir ces droits-là. C'est vrai que le politicien est soumis à cette règle de la Cour suprême. Mais ce qu'il faut comprendre — ce n'est peut-être pas dans ce document-ci, mais dans le document que l'ACFO va vous présenter au mois de septembre — c'est qu'il y a quand même une obligation des politiciens fédéraux et provinciaux de se consulter pour la nomination des juges à la Cour suprême.

Il est vrai qu'il y a toujours quelqu'un qui va décider, en fin de compte, ce qui est constitutionnel, ce qui ne l'est pas et quels sont les droits et libertés. De la même manière, ils vont aussi choisir les membres de cette composition de la Cour suprême, et dans cette composition-là ils vont devoir tenir compte des intérêts des Canadiens. C'est vrai qu'il existe une délégation de la souveraineté du Parlement vers la souveraineté du système judiciaire. Mais c'est comme le processus américain. À un moment donné, il faut être capable de protéger les droits. La meilleure façon, aux États-Unis, c'était à travers une Charte des droits appliquée par les tribunaux, a bill of rights.

Mais vous allez me dire qu'en bout de ligne, il y a toujours l'article 33, la clause «nonobstant». L'ACFO n'a pas pris position encore sur cet article-là, mais un politicien peut toujours se rabattre là-dessus comme mécanisme. Mais il y a certains droits que l'ACFO considère auxquels on ne peut pas toucher, par exemple, tout ce qui concerne les articles 16 à 23.

Si on n'avait pas eu les articles 16 à 23 dans une charte des droits et que ce n'étaient pas les tribunaux qui les avaient défendus, le Canadien français n'aurait pas eu un début de gestion scolaire ; le Canadien anglais n'aurait pas eu cette gestion qu'il a eue au Québec. Il y a eu des problèmes comme tels et il y a eu un problème de faire reconnaître ces droits-là.

Alors, la Charte des droits, peut-être qu'elle attaque la souveraineté du Parlement, mais d'un autre côté, elle permet aux Canadiens d'avoir une plus grande liberté de jouir

des droits, et surtout de se faire reconnaître des éléments qui n'ont pas existé pendant 120 ans.

Pourquoi est-ce que ça a pris 120 ans pour se faire reconnaître des droits dans le domaine criminel, dans le domaine scolaire et dans le domaine des langues officielles ? Pourquoi est-ce que les politiciens ne l'ont pas fait avant ? Il a fallu avoir un mécanisme pour avoir ces droits-là. Il y a une conséquence : nous avons perdu un peu de notre souveraineté, mais tous les Canadiens sont contents d'avoir eu cette liberté-là.

M. Bisson : Pendant les discussions que nous avons eues avec certaines personnes qui ont fait des présentations, leur vue est que jusqu'à un certain point ce n'est pas la revendication des droits personnels qui est avancée à travers la Charte des droits, mais plutôt la revendication selon les certains points.

Si on regarde certains cas qui ont été devant la Cour suprême, soit provinciale ou fédérale, faisant affaire avec beaucoup de questions comme celle du fameux Sunday shopping — différentes questions dont le monde a parlé — ils sont allés revendiquer leurs droits comme entreprises selon la Charte des droits, ce qui a ôté les droits des individus. C'est la question que je me pose. Mais on va partir de là.

Vous avez aussi touché à la question du sénat, et vous avez pris la position que l'ACFO est en faveur de la création d'un sénat où on a l'élection des sénateurs selon la représentation des provinces. Vous ne voyez pas ça, jusqu'à un certain point, comme deux niveaux de gouvernement qui peuvent se nuire l'un l'autre, et que le gouvernement fédéral peut décider d'adopter telle et telle loi concernant telle et telle question et que la politique est telle dans le sénat, que ça peut bloquer un peu ?

M. Levasseur : Ce qu'il faut comprendre, c'est que l'ACFO veut qu'on fasse une chambre de la fédération qui va être une chambre de conscience des Canadiens à long terme et qu'à un moment donné la chambre de la fédération va s'occuper des valeurs fondamentales du pays. Il n'y a pas de partisanerie politique, il n'y a pas d'activité politique, il n'y a pas de ligne de conduite ni ligne de vote de parti.

1450

M. Bisson : Ce n'est pas possible.

M. Levasseur : C'est une proposition qu'on a avancée. L'idée de base est que le candidat va se présenter suivant des opinions ou des idées qu'il a, mais sans être rattaché à un parti politique. Ce qui arrive c'est que le sénat représente aussi les régions. Par conséquent, le sénat s'occupe de choses qui sont vraiment à long terme pour les Canadiens ou qui touchent aux valeurs. C'est vrai que c'est une deuxième chambre, c'est vrai qu'elle peut avoir le droit de veto sur les valeurs canadiennes comme telles, mais d'un autre côté, la Chambre des communes s'occupe vraiment du fonctionnement de l'économie, des activités sociales et du budget.

Le sénat n'a pas le pouvoir de présenter un projet à caractère financier. Par conséquent, le sénat va être une chambre de délibération et d'investigation, mais aussi une chambre législative, ce qui va faire en sorte que le sénat va s'occuper des tendances qui sont vraiment des préoccupations des Canadiens, avec une composante régionale. Cela

va lui permettre d'identifier certains problèmes, d'en suggérer au gouvernement, mais aussi de présenter des projets de loi pour corriger la situation.

Un exemple de cela peut être des problèmes qui touchent la pauvreté. Un autre problème peut être celui de violence conjugale. Un autre peut porter sur des questions d'éthique : la stérilisation des malades mentaux ou des choses comme ça. Il faut qu'il y ait une chambre qui puisse étudier ces problèmes-là, parce qu'à la Chambre des communes, ils sont embourbés.

À un moment donné, il faut réfléchir à cela. Le candidat au sénat va être élu pour une période de dix ans, renouvelable à tous les cinq ans. Donc, si vous avez un sénat qui commence en 1990, la moitié en est renouvelé en 1995, ce qui fait en sorte que le sénat comme tel a une vocation de conscience qui s'occupe des Canadiens et n'interfère pas dans la direction générale de l'économie et de la gestion du pays. Il a plutôt une vocation de beaucoup plus longue durée, beaucoup plus réfléchie qui aide les Canadiens à se trouver et à essayer d'enquêter sur des problèmes.

M. Bisson : La crainte que j'ai, en écoutant beaucoup de personnes qui ont fait des présentations devant notre comité et des discussions que j'ai eues avec mes amis dans mon comité et avec d'autres personnes, c'est qu'il y a l'attitude que le fédéralisme ici au Canada, et jusqu'à un certain point nos provinces, n'a pas vraiment répondu à nos besoins comme citoyens de nos provinces et de notre pays.

Ça fait 126 ans qu'on est ici, nous, les Canadiens en tant que nation. En 126 ans on a fait beaucoup d'affaires avec notre système politique qu'on avait. Ça ne veut pas dire qu'il est parfait ; comme n'importe quoi, on a besoin de changer de chaussures de temps en temps et de faire des ajustements. Il y a un peu le sens qu'il faut tout changer pour être capable de l'arranger.

Moi, j'ai besoin de me poser des questions et reprendre et regarder. On commence à parler de changements fondamentaux de notre système de gouvernement ici au Canada. On parle de tous les bords du pays de la question de la réforme du sénat, de la liberté des députés et de la revendication des droits plus éloignés, à travers la Charte des droits et autres places. Ce qui me fait peur c'est qu'avec le système, aussi imparfait soit-il, on était capable d'avancer le bien-être de la société jusqu'à un certain point.

La peur que j'ai, c'est qu'on flanche un changement dans le système au point où il est très difficile, comme pays, d'en venir à penser à certaines questions et à trouver des réponses, parce qu'on va être rattaché, jusqu'à un certain point, si on met tout dans la constitution, si on s'en va dans un système qu'on avait envisagé dans le futur.

M. Tanguay : Monsieur Bisson, si vous le permettez, juste une parenthèse ici. Je crois que le rôle de l'ACFO en ce moment — Puisque le Canada est en train de se questionner sur lui-même, ça ne veut pas dire que tout le système canadien va être bouleversé. Mais d'autre part nous, en tant que Canadiens et en tant que Franco-Ontariens et Franco-Ontariennes, devons au moins nous poser la question. Peut-être que le changement que l'ensemble de notre pays apportera à la fin de nos délibérations sera moins

grand que toutes les recommandations que vous pouvez entendre.

Je peux comprendre votre inquiétude des fois — pas simplement la vôtre, Monsieur Bisson, comme membre du comité, mais aussi celle de tous les autres commissions et comités à travers le Canada. Ça rentre, ça sort, ça n'arrête pas, les recettes qu'on pourrait apporter pour régler, si on peut l'appeler ainsi, le mal canadien. Mais d'autre part, une fois qu'on aura fait notre réflexion canadienne, on réalisera peut-être, ou on choisira peut-être, que la plupart des institutions que nous avons présentement respectent bien, et il y aura peut-être moins de changements que certains d'entre nous n'anticipent. Mais d'autre part, l'ACFO et tous ses membres reconnaissent qu'il est important que la communauté y réfléchisse et apporte à sa province ses réflexions.

M. LeBouthillier : Monsieur Bisson, vous avez parlé de la Charte, et j'aimerais parler un peu plus des droits linguistiques dans la Charte juste pour voir peut-être l'importance que l'inclusion des droits linguistiques dans cette charte-là a eue.

Si on regarde l'article 23, par exemple, c'est-à-dire les droits à l'éducation des minorités linguistiques, vous savez que, par la suite, il y a eu des poursuites dans presque toutes les provinces pour faire changer un statu quo qui était déplorable. Lors de ces poursuites-là, et suite à des succès, certains élus ont invoqué la clause «nonobstant», ignorant en fait que les droits linguistiques ne pouvaient être touchés par cette clause. C'est là qu'on a vu l'importance d'avoir, dans certains domaines, des clauses telles que la clause «nonobstant».

C'est pour ça, peut-être — pour faire le lien avec M^{me} O'Neill tout à l'heure, quand elle parlait de la formule d'amendement permanente — une des choses que l'ACFO aussi a recommandées, que certains sujets restent sujets à la règle d'unanimité, entre autres les droits linguistiques et d'autres valeurs fondamentales à la société canadienne et que, seulement lorsqu'on voudra promouvoir davantage ces valeurs-là, on devra avoir une formule flexible. Alors, nous essayons d'être consistants dans notre approche.

Je crois qu'il faut faire attention avant d'être trop pessimiste envers cette Charte qui, je crois, à plusieurs égards, a permis aux Canadiens d'apprendre davantage sur leurs droits. Si certains groupes plus privilégiés ont eu accès à la cour, quand même il y a beaucoup d'autres groupes qui sont allés devant les tribunaux avec le programme de contestation judiciaire, tous les groupes à l'égalité. Par les fonds accordés par les gouvernements, entre autres le fédéral, ces groupes ont pu se présenter devant les tribunaux.

En terminant, vous savez peut-être que la Cour suprême du Canada maintenant a dit, par exemple, que l'article 15 devrait permettre aux groupes qui ont été défavorisés dans le passé de se présenter devant les tribunaux. Je crois que c'est un acquis aussi important. Alors, le constat : il y a peut-être des côtés négatifs, mais je crois aussi qu'il y a beaucoup d'aspects positifs.

M. Bisson : Ce n'est pas pour être pessimiste au total que je soulève la question, mais c'est quelque chose à laquelle on a besoin de réfléchir parce que, jusqu'à un

certain point, ça nous amène vers un système plus américain que canadien. Mais je laisse la question parce que c'est un débat qu'on pourrait faire.

1500

Mr Harnick: I have reviewed your five fundamental principles on page 3, and they cause me some concern in that they are really in direct contradiction to what many witnesses have told us. We heard last week from Roberta Jamieson, the Ombudsman, who essentially talked about the idea of the francophone and anglophone populations in this country decreasing and the fact that we can no longer look at a Constitution that refers, as you describe it, to national communities, or three national communities. That is a term she found limiting and that did not recognize the fabric of Canadian life as it really exists today.

To go one step further, your third item speaks of recognizing constitutionally the right of the national communities to equal opportunity and the responsibility of governments to promote such. Yet number 4 recognizes the contribution of successive generations of new Canadians, but does not provide them with an opportunity for equal opportunity. I find that the notion of developing a Constitution based on the concept of founding nations is no longer in vogue other than with members of the founding nations. Quite frankly, I do not think this is a concept that is going to fly if we believe in a multicultural society. I wonder if you could comment on that, and specifically on the way you see your organization if we totally avoid the concept of founding nations and look at it in terms of equality among all racial groups and languages.

M. Tanguay : Pour commencer, nous, de l'Association canadienne-française de l'Ontario, ne croyons pas que les concepts qu'on avance ici soient contradictoires avec la réalité canadienne actuelle, dans le sens que, si nous regardons autour de nous, qu'on soit en Colombie-Britannique, aux Territoires du Nord-Ouest ou en Ontario, on reconnaît qu'on est une nation formée d'individus provenant de toutes sortes de communautés. J'y inclus, comme vous le disiez tout à l'heure, la dimension multiculturelle.

D'autre part, nous remarquons que, depuis le début de ces mouvements migratoires qu'a connus le Canada dès ses débuts, pour ne pas parler des années 40, 50 et d'aujourd'hui, il y a eu définitivement une transformation dans la texture canadienne. Mais, d'autre part, nous avons remarqué que notre réalité canadienne a toujours fait en sorte que ces néo-Canadiens se sont toujours identifiés en gardant leurs richesses culturelles et se sont toujours intégrés, si vous voulez, dans la réalité linguistique francophone ou anglophone au Canada.

C'est sur ce principe de base que notre présentation est faite à ce moment-ci. Ceci n'empêche que nous reconnaissons, comme nous le mentionnions à un moment donné, qu'il serait important dans la redéfinition de notre constitution de regarder de très près l'article 27 de la Charte, qui parle du maintien et de la valorisation du patrimoine multiculturel et canadien.

Comme nous vous l'avons mentionné au début, nous sommes en période de réflexion. Nous vous apportons l'état de notre réflexion à ce moment-ci, et nous considérons que

les cinq principes fondamentaux énoncés ne vont pas à l'encontre de la réalité canadienne.

M. LeBouthillier : J'aimerais ajouter que je crois bien que M^{me} Jamieson se référerait à l'origine des gens et à la composition du Canada à l'heure actuelle. Mais je ne crois pas qu'on puisse dire qu'au Canada, maintenant, il y a une chute de la communauté linguistique anglophone et francophone. Je ne crois pas que les numéros aient beaucoup changé à cet égard-là.

Vous dites aussi «l'égalité parmi toutes les langues». Je crois que l'ACFO est tout à fait d'accord qu'il ne devrait y avoir aucune discrimination d'une personne en vertu de sa langue. Je ne connais pas beaucoup de pays à travers le monde qui donnent égalité à toutes les langues, dans le sens que toutes les langues devraient être très connues de tous les individus et qu'on devrait promouvoir toutes les langues.

Nous disons qu'il y a une réalité historique au Canada qui fait que les deux langues les plus parlées par l'ensemble de la communauté sont le français et l'anglais. Nous sommes très favorables aussi à des mécanismes pour les langues autochtones. On aimerait préserver les 50 et plus langues autochtones parce que c'est une richesse pour le Canada. Mais il y a une réalité et il y a quand même deux groupes linguistiques. Vous dites «founding nations». Nous parlons ici de communautés linguistiques.

M. Tanguay : Communautés nationales.

M. LeBouthillier : Communautés nationales. Et si les jugements les plus récents de la Cour suprême du Canada parlent encore de bilinguisme, et devraient peut-être parler plus de multiculturalisme, ce sont encore des termes qui sont évoqués et qui, il me semble, peuvent s'intégrer dans cette notion que nous développons ici. Alors nous voyons, par exemple, le multiculturalisme comme s'intégrant et comme étant une partie très importante des communautés linguistiques francophone et anglophone. C'est certain que dans le passé, on n'a pas assez poussé cette notion : comment les groupes multiculturels peuvent-ils contribuer ? Il y a eu trop de division. Nous, les francophones de l'Ontario, sommes prêts ; nous sommes très enthousiastes à participer dans cette démarche. Mais on croit quand même qu'il faut reconnaître certaines communautés linguistiques puisque c'est la réalité statistique historique.

Mr Offer : I have a question about one aspect of your presentation which I was not able to readily see. On the bottom of page 5 you talk about provincial participation in the development and implementation of economic, fiscal and monetary policies of the federal government.

As you will know, at this point there is discussion principally between the federal government and the province of Quebec which talks about not an increased provincial participation in federal decisions, but rather about a devolution of power from the federal to the provincial area. That is an area of discussion which is going on throughout the country. I am wondering if you might share with us whether you are in principle in favour of a devolution of power from the federal government to the provincial governments.

M. Tanguay : Je vais commencer, et mes confrères ou ma consœur compléteront. Si je peux partir de l'idée

qui est énoncée dans notre présentation, c'est qu'il y a certaines valeurs fondamentales au Canada qui devraient demeurer, à tout prix, des responsabilités fédérales.

Mais d'autre part, dans notre réflexion, comme tous les membres du comité ici et comme tous les Canadiens, nous avons été quand même touchés par différents rapports de commissions, pour ne pas mentionner le rapport Allaire, qui demandent quand même une certaine dévolution. Je ne suis pas là pour porter jugement sur le nombre de demandes de dévolution de pouvoir central qui existent dans le rapport Allaire mais, d'autre part, on entend la même chose, les mêmes commentaires, peut-être d'une façon différente, de l'Ouest canadien.

Nous, à l'Association canadienne-française de l'Ontario, nous considérons comme des Ontariens à part entière et nous avons réfléchi sur la question suivante : comment, tout en gardant l'intégrité d'un gouvernement central fort, peut-on suggérer à notre province des possibilités d'un dialogue sérieux, d'un accroissement de responsabilités, qu'elles soient d'ordre fiscal, monétaire ou économique ? Ici, j'ai tout simplement tenté de vous faire valoir l'origine de notre réflexion.

À ce moment-ci, je demanderais peut-être à un de mes confrères d'ajouter pour clarifier.

M. Levasseur : L'ACFO a essayé de marquer ici à la page 5 le fait que le fédéral possède les pouvoirs économiques définis dans l'article 91, et ces pouvoirs-là sont énormes. On regarde, par exemple, dans le domaine des cours monétaires, le monnayage, le poids et mesure. Vous avez le recensement, les statistiques et la taxation directe et indirecte.

L'ACFO essaie de dire que, à un moment donné, le fédéral doit jouer son rôle d'agent économique mais que, dans ce rôle, il doit y avoir un mécanisme de consultations avec les provinces où les provinces vont pouvoir participer à la négociation et à l'élaboration des politiques économiques, fiscales et monétaires du fédéral.

Le fédéral garde sa juridiction, mais il doit consulter les provinces comme les provinces doivent consulter le fédéral. Alors, ce n'est pas comme si un gouvernement décide d'aller de son côté en matière économique et de faire quelque chose sans tenir compte des intérêts des régions. Et pourquoi ? C'est parce qu'à un moment donné, il faut essayer d'harmoniser un peu les politiques économiques et budgétaires au Canada.

Vous parlez de dévolution. Quand vous dites «dévolution» et qu'il y a des gouvernements qui seraient intéressés à transférer un pouvoir fédéral aux provinces, c'est possible dans certains cas. Mais dans bien d'autres cas il faut qu'il y ait une modification constitutionnelle qui prévoit cette délégation administrative. Quand ce pouvoir est donné à Ottawa, il ne peut pas être administré dans sa pleine totalité à une province parce que le fédéral ne peut pas déléguer un pouvoir constitutionnel à une province. Il faut qu'on prévoie cette décentralisation. Une dévolution, c'est juste donner le pouvoir à quelqu'un, et on le reprend quand on veut. Dans la constitution, il est très difficile actuellement de faire ce mécanisme-là. Il faut absolument arriver à dire qu'on va donner le pouvoir aux provinces et que ce sont les provinces qui vont l'exercer. Il peut y avoir un élément de

permanence, donc, qui peut impliquer que le fédéral perd ce pouvoir-là.

L'ACFO vous dit que nous, on n'est pas prêts à discuter de 91 et de 92 et de ce transfert d'Ottawa vers les provinces. Ce que l'ACFO dit, c'est qu'il doit y avoir un mécanisme de consultation de l'usage de ces pouvoirs-là pour tenir compte des intérêts des provinces. Avec les présentations des propositions du fédéral et des autres intervenants, l'ACFO va pouvoir prendre une position plus claire. Mais cette consultation-là se fait tant au niveau économique qu'avec la Banque du Canada pour tenir compte des régions.

1510

M. Tanguay : Peut-être pour compléter, Monsieur LeBouthillier.

M. LeBouthillier : Juste une petite précision, Monsieur Offer : s'il y a un nouveau partage des pouvoirs, une modification constitutionnelle, s'il y a des propositions dans cette direction-là, il faut bien voir que tous les groupes francophones à l'extérieur du Québec, au Canada, vont regarder ça de très près. Par exemple, si vous allez transférer l'immigration, disons à la province de l'Ontario, actuellement, avec le fédéral, avec l'article 20 de la Charte, il y a des garanties constitutionnelles de services dans sa langue.

Alors on peut se demander, si jamais il y a des transferts, quelles sont les garanties des Franco-Ontariens aussi longtemps que l'Ontario n'accepte pas d'adhérer à l'article 20 tel qu'il existe présentement ou dans une forme modifiée. C'est une question qu'il faut se poser sérieusement. Comme mon collègue l'indiquait, l'ACFO ne s'est pas prononcée sur le bien-fondé d'un nouveau partage des pouvoirs, pouvoir par pouvoir. Mais je peux vous assurer que cette dimension linguistique est très près de nous. C'est pour ça que ça fait un peu peur, tout nouveau partage des pouvoirs sans que, du même coup, les gouvernements provinciaux qui reçoivent ces pouvoirs-là n'adhèrent pas, par exemple, aux droits linguistiques inclus dans la Charte.

Mr Offer : It appears that you are almost reserving your final response to see exactly what comes out and what types of guarantees you will see and be confident with. Where I seem to be at this point is that the province of Quebec is saying it requires greater provincial powers in order to maintain and enhance its aspirations and what it can become.

I am hearing from your association that you are more confident in those types of powers remaining with the federal government, so this will enhance the purposes which your association is involved in and for which it has been fighting for so many years. I am wondering what you say to this committee that is left at the end of the day with all of these submissions.

M. Tanguay : Peut-être que je pourrais commencer en vous rappelant que ce n'est pas la première présentation que l'on fait. On est passé à la commission Bélanger-Campeau ; nous sommes allés rencontrer les gens du comité Beaudoin-Edwards ; nous sommes venus ici deux fois, etc. Nous n'avons qu'un message en fonction du Canada redéfini. C'est un gouvernement central fort mais qui respecte quand même les différences qui peuvent exister, que ce soit dans l'Ouest canadien, ou les besoins de Terre-Neuve

ou la nouvelle dimension que prendra, par exemple, les Territoires du Nord-Ouest ou le Yukon. C'est dans cette perspective.

Mais à un moment donné, quand les intervenants et intervenantes seront à la table de négociations, il y aura sûrement des échanges de faits. Maintenant, que ce soit une grande dévolution ou une dévolution moindre des pouvoirs, dépendant de ce qui se passera à ce moment-là ou de la clarté des propositions, je crois que ce n'est pas à nous, comme association, de déterminer chacun des pouvoirs qui pourraient être discutés.

Mais d'autre part, nous avons tenté de lancer le débat par rapport à la communauté franco-ontarienne et d'impliquer la communauté franco-ontarienne comme Ontariens à part entière. On n'a pas tout simplement à parler de la langue, de la langue et de la langue. Les Franco-Ontariens et les Franco-Ontariennes, dans tous les domaines d'activités, peuvent agir et agissent de façon très positive.

M. Levasseur : Il y a quatre choses qu'on voulait juste reprendre avec vous en rapport avec votre question. Un, l'ACFO n'a pas pris de position précise encore sur les articles 91 et 92, mais ça n'empêche pas l'ACFO de prendre position du moment où elles vont être connues, les recommandations, comme vous l'avez présenté vous-même.

Deux, dans toute forme de décentralisation — d'accord, vous utilisez «dévolution» ; j'utilise le mot «décentralisation» parce que c'est le pouvoir qui est délégué, qui est transmis constitutionnellement — l'ACFO veut avoir une garantie que, si ce pouvoir-là est délégué à une province, par exemple la province de l'Ontario, il y ait une garantie juridique qui soit reconnue en Ontario pour que le Canadien français qui vit en Ontario ait des services en français. On l'a au fédéral ; on veut l'avoir aussi au niveau provincial. C'est important pour nous parce qu'on a peur qu'à un moment donné, ce pouvoir soit transféré sans qu'on puisse avoir une protection.

Trois, comme il a été mentionné, et c'était le premier élément de notre présentation lorsqu'on parlait des objectifs, on n'est pas pour une uniformité mais plutôt pour une acceptation des particularités des régions. Au moment venu, les politiciens vont décider ce qui est dans l'intérêt des régions. Par conséquent, l'ACFO n'est pas pour arriver et dire ce qui est bon pour les Maritimes et ce qui est bon pour l'Ouest, mais elle peut dire ce qui est bon pour l'Ontario et pour les Canadiens français qui vivent en Ontario, les Ontariens ou les Franco-Ontariens.

La dernière chose est que dans tout processus de négociation, lorsqu'il y a une définition qui porte sur un pouvoir ou cette transmission à un autre ordre de gouvernement, il y a toujours un compromis qui se fait. Ce compromis se fait toujours à la dernière minute et cette négociation se fait entre intéressés. C'est pour ça que, pour le cas de l'Ontario, l'ACFO veut un siège à la table de négociations pour la province de l'Ontario. On veut être assis à côté du gars qui est autochtone et à côté des gars qui sont multiculturels de sorte que, quand ça va arriver à la dernière minute, cette négociation et ce compromis, nous, on va être capables de vous dire, «On n'est pas d'accord». On ne veut pas être en arrière, derrière les rideaux et qu'on nous présente le document et qu'on nous dise, «Donnez-nous un feedback». On veut être assis là à côté du gars et

être capable de dire, «Nous, on vote non ou on vote oui». C'est pour ça qu'on n'est pas prêt à toujours faire un shopping list pour répondre au rapport Allaire.

Mme Carter : Oui, on a déjà discuté du partage des pouvoirs entre les provinces et le gouvernement fédéral, mais je voudrais une explication du numéro 2 à la page 7, où on parle de multiplier les niveaux de gouvernements, si vous voulez, en créant un comité. Pourquoi est-ce qu'on parle de donner ce pouvoir politique à un juge ? On dit que ce comité serait dirigé par un juge.

1520

M. Levasseur : Le pouvoir résiduaire appartient actuellement au fédéral sauf l'article 92(16), qui permet un pouvoir résiduaire dans les affaires locales. Le problème c'est que l'État canadien est un des seuls États où tous les pouvoirs qui ne sont spécifiquement donnés aux provinces arrivent au fédéral. Aux États-Unis ça va aux États. L'affaire est qu'on ne peut pas réécrire l'histoire. Mais on peut construire sur l'avenir. Un exemple de ça, c'est l'énergie solaire. Par exemple, dans 92A il n'y a pas une mention que les provinces peuvent taxer indirectement l'énergie solaire. Ce n'est pas une énergie non renouvelable ; elle est renouvelable. Par conséquent, ce pouvoir-là tomberait dans les mains du fédéral. Pour essayer d'équilibrer les situations on s'est dit, pourquoi ne pas essayer de laisser aux politiciens le mandat de discuter et de se partager ce pouvoir-là ?

Pourquoi un juge d'une cour supérieure ? C'est parce qu'à un moment donné il faut y avoir un arbitre, une personne qui établit des règles qui soit impartiale et qui puisse dire, «Voilà». À un moment donné il faut avoir un ordre, une séance, une discussion et des règles. Ça ne veut pas dire que le juge prenne position et qu'il vote ; c'est juste une façon d'avoir un mécanisme qui puisse refléter cette impartialité et arriver à un résultat précis. Le problème est que si on se met à négocier et à négocier, en bout de ligne le pouvoir va retomber au fédéral. L'article 92 ne s'applique pas, donc ça tombe sous l'article 91 et c'est Ottawa qui gagne tout le temps.

En ayant un juge on force la discussion, on force le partage et on laisse aux politiciens le choix de gérer. Mais s'il n'y a pas d'entente, il faut que quelqu'un prenne une décision. Ça va faire l'enjeu, encore une fois, d'une Cour supérieure, ce qui revient au propos de M. Bisson qu'on judiciaireise encore la constitution. Mais il faut qu'il y ait un arbitre et l'arbitre, selon nous, c'est la Cour suprême.

M. LeBouthillier : On s'était dit que si on prenait une règle trop rigide — certains groupes disent que le pouvoir résiduaire devrait maintenant être donné aux provinces ou rester au fédéral — on a essayé de trouver un milieu à tout ça. C'est tout simplement pour souligner que le Groupe des 22 recommande aussi, «Nous proposons d'abolir» la disposition actuelle du pouvoir résiduaire «et de laisser au processus politique et aux tribunaux le soin d'effectuer le partage en fonction des rôles attribués aux deux ordres de gouvernement».

Il y a d'autres groupes aussi qui ont préconisé, disons, le même genre de mesures que nous. Tout ce qu'on a fait c'est spécifier que c'était un juge d'une cour supérieure.

Évidemment, il pourrait s'agir d'une cour d'appel ou de la Cour suprême.

Mme Carter : Les numéros 3 et 4 ne sont pas très clairs non plus.

M. Levasseur : Lorsqu'on parle de ce chapitre-là, on vous dit ici «les atteintes aux principes d'un véritable fédéralisme». Notre présentation vous dit qu'il faut redéfinir la fédération canadienne. On veut avoir une vraie fédération. Elle existe peut-être dans son fonctionnement au jour le jour, mais dans l'écrit constitutionnel, dans le document de 1867, on n'avait pas une fédération. Il y a des principes qui permettent au fédéral d'empêcher la province d'exercer sa juridiction.

Quand on dit «fédération», on veut dire un ordre souverain divisé entre deux composantes distinctes partageant exclusivement leurs champs de compétence dans une formule harmonisée. Donc, vous avez la province et le fédéral. Quand on a créé la constitution de 1867, Ottawa pouvait empiéter sur les provinces. Il avait le pouvoir de dépenser, le pouvoir résiduaire, les pouvoirs de désaveu et de réserve. Dans la constitution le fédéral peut désavouer une loi. On appelle ça «disallowance». Il peut déclarer nul une loi provinciale, ou le lieutenant-gouverneur peut demander au souverain ou à son représentant de réserver une loi pour un temps que lui décide au bon plaisir de sa pensée. Par conséquent, la province ne jouit pas de son exclusivité. C'est toujours Ottawa qui vient.

Alors nous, on se dit que ça fait longtemps que ça n'a pas été utilisé. Pourquoi ne pas juste l'abolir plutôt que se casser la tête à le définir ? Ça n'a pas été utilisé. C'est un empiètement sur les provinces ; abolissons-le.

Quant au numéro 4, il s'agit des définitions jurisprudentielles. Elles ne sont pas écrites dans la constitution. La dimension nationale et la théorie de l'intérêt national, ce sont des théories qui ont été développées par les tribunaux, dont l'arrêt Hodge, par exemple, en 1896, l'arrêt Russell et tout ça, ce qui fait en sorte que le fédéral peut arriver et déclarer que ceci est de la compétence du fédéral et enlever un pouvoir qui appartenait aux provinces et le transférer à suivre à Ottawa. Alors, ces pouvoirs-là sont utilisés à différents degrés mais on ne sait pas comment ils sont utilisés parce que ce sont les tribunaux qui les ont créés.

L'ACFO dit qu'à un moment donné, pour vraiment faire une fédération, pour vraiment respecter cette exclusivité des provinces, on doit essayer de définir ce principe pour qu'il n'y ait pas un empiètement. On n'empêche pas le fédéral de tenir compte d'une priorité nationale, mais on veut que ce soit défini pour qu'on puisse savoir qu'à un moment donné, s'il y a une crise et que ce n'est pas le pouvoir d'urgence qui s'applique, si on applique ces théories-là on sait ce que ça veut dire. On ne veut pas que les provinces se sentent démunies face à un pouvoir qui permet à Ottawa de tout faire sans que les provinces puissent réagir.

M. Tanguay : M. LeBouthillier aimerait compléter.

M. LeBouthillier : J'ai sous les yeux un article de Bruce Ryder dans la Revue de droit de McGill — c'est un professeur à Osgoode Hall — et en ce qui a trait aux pouvoirs de désaveu et de réserve, bien que là il inclue aussi le pouvoir déclaratoire. Il dit ceci tout simplement : «The

disallowance and declaratory powers have fallen into disuse and their exercise by a contemporary federal government would provoke enormous political consequences.»

Je crois que la dernière fois que ces pouvoirs-là ont été invoqués était en 1962, par un lieutenant-gouverneur, si je ne m'abuse, de la Colombie-Britannique, et l'autre en 1942. Autrement dit, je crois qu'on ferait juste confirmer un peu ce qui est déjà la pratique et ça clarifierait les choses.

M. Tanguay : Premièrement, on remercie de nouveau le comité d'avoir prêté cette oreille. Je suis sûr que le message qu'on vous transmet au nom de toute la communauté franco-ontarienne aujourd'hui a évolué depuis notre première rencontre. Nous allons continuer de faire notre travail.

Nous nous considérons toujours des Ontariens à part entière et j'espère que vous pouvez apprécier, après notre entretien d'aujourd'hui, qu'on a eu à peine le temps d'effleurer les sujets qui nous sont communs. Nous espérons, et nous allons tout faire pour que, à l'avenir, on puisse s'insérer de façon encore plus active. Au nom de mes collègues, je vous remercie.

Le président suppléant : Au nom du comité, j'aimerais vous remercier d'avoir présenté un rapport aussi complet et également de votre obligeance à répondre aux questions des députés de ce comité.

1530

GEORGE VEGH

The Acting Chair: Mr George Vegg is to make a presentation now before the committee. Mr Vegg, welcome. Introduce yourself for the record. Are you representing yourself, sir, or an organization?

Mr Vegg: I am representing myself. Actually, I am a stand-in. You had asked Neil Finkelstein, an associate of mine, to make a presentation and Mr Finkelstein asked me to say some words.

The Acting Chair: As we begin, you have 30 minutes of time. We hope you leave a little bit of that time available for questions and answers.

Mr Vegg: I will. I have been asked to address the questions relating to the Charter of Rights today. I would like to focus my discussion on the issue of entrenching the social charter. I provided you with an outline of the four points that have to be considered, but before going through them I would like to tell you what these points are aimed at.

My basic proposition is that social rights and individual rights are fundamentally different, and that because of this difference they should not be implemented or enforced in the same manner. In particular, social rights should not be enforced through the litigation process or by judicial remedies. New institutions with different remedial powers are required for the effective enforcement and implementation of social rights.

Let me deal with these points in more detail. The first matter on the outline I provided to you is a need for the constitutionalization of social rights. I think the need arises out of two conflicting factors. The first is that there are limitations on the federal government's ability to continue being the agency for enforcing national standards. I think that has seen the reduction of transfer payments. There

seems to be a general desire of decentralizing the federation. There is also the federal deficit, which prevents the government from funding existing programs and initiating new programs.

The other conflicting factor is a belief in national standards among many Canadians. Proposals have been put forward to deal with these few conflicting factors. In the Meech Lake proposal and in the Group of 22 report, I think there is a recommendation that social programs be implemented by the provinces but national standards be maintained. The idea of a social charter, I think, is to entrench those ideas of national standards into the Constitution so that the criteria are set in a more fundamental way than being determined by the federal government of the day.

The social rights entrenched in the Constitution: I think it is important to remember the fundamental conceptual distinction between individual rights and social rights. Individual rights are traditionally conceptualized as protecting the ability of people to carry out activities without interference from the government. For instance, when one makes a claim that the right to freedom of expression has been infringed, the claim is basically that they want to say or do something and the government is stopping them. The remedy for that is quite simple: They go to the court and ask it to stop the government from interfering with them. The judicial remedy is to strike down legislation.

The claim for a social right is entirely different. For instance, if people make a claim that their right to accessible health care or to day care for their children is being violated, they are not claiming that the government is preventing them from doing something. The proper implementation of this right requires positive action on the government and on private institutions in terms of hospitals and universities, and it requires funding from the taxpayers. Essentially, it requires more social co-ordination to implement a social right than it does an individual right.

As well as the limited remedies available to the judiciary in enforcing rights, we also have to consider how the litigation process works. The court is not capable of making findings and facts which are not on the record before it. My experience is as a constitutional litigator. I can tell you from that experience that perhaps the most important strategic consideration is bolstering the record in favour of your case and discrediting the other side's case. A lot of strategic manipulation goes on to creating a judicial record. The record you end up with is not the type of record you would require in order to make the difficult balancing that is necessary in determining a national social policy.

An issue related to the institutional constraints of the courts is their lack of expertise in the area of social policy. There is simply no reason to prefer the legal profession, whether through lawyers presenting their cases or judges deciding cases, as creators of social policy. Again, when you compare it to individual rights, the judiciary has at least had some traditional expertise and experience in preventing governments or government agencies from going outside their authority. They have had that expertise prior to the charter. They have never been called upon to restructure social policy, and I do not think there is any reason to call upon them to do so now.

From this brief look at the limitations of judicial enforcement of social rights, it seems to me at least that if social rights are to be put into the Constitution, a different institution would be necessary to enforce them. There are three basic questions with regard to this institution, and I have listed them in part 4 of the outline. These questions relate to the composition, the mandate and the powers of this new institution. I will just make a brief point on each of them.

With regard to the composition, because this institution will be dealing with a number of matters that are in both federal and provincial jurisdiction, I think there should be representation from both levels of government and perhaps from municipal governments as well, as their responsibilities for welfare may also be involved. I think it is also important that this institution be seen as non-partisan. In this regard, appointments may be made in consultation with non-governmental institutions which are interested in these issues and which will be affected by having social rights entrenched, such as community organizations, business, labour. After these appointments are made, I think the members should be free of continuing government supervision for the period of their appointment to ensure the appearance of independence.

As for the mandate of this institution, I think it should be to review legislation and administration of social policy with reference to the principles put forth in the Constitution, such as accessibility, efficiency, and the dignity accorded to the recipients of these programs. A review should consist of consultation with experts and, more important, with those who are directly affected by the programs, such as those who rely on the programs and, again, others such as business, labour and community groups who are intimately involved in the funding and implementation of these programs—the implementation, at least—in the workplace.

The ultimate question is, what power should be given to this institution? As I said earlier with regard to judicial enforcement, I think a solely negative power to strike down laws is entirely inconsistent with the idea of social rights. I also do not think this institution should be entitled to legislate. At the same time, an institution which is only entitled to make reports on governmental policies and practices faces the possibility of being irrelevant, and that its reports could just be ignored. I think the power given to this body should be the capacity to table bills in the Legislature. The government should be left to vote down the bill or amend it as it sees fit, but I think the act of tabling a bill focuses legislative attention and energy on the problems identified by this institution. The proposed bill would have a certain amount of credibility, and because of the institution's expertise and experience, the bill could be expected to have some appreciation for the complexities involved in delivering social policies.

There are a myriad of possibilities on how this bill could be put forward. I am not pretending to have all the answers or to suggest that this is a simple process. One possibility is that this institution report from time to time on various policies and practices and make recommendations. When it comes across a particularly egregious practice, it may make its report to the Legislature or legislatures

involved and effectively say that the current system is intolerable, and that if the Legislature does not make some steps to reform it within a reasonable time, the institution will do it for them.

Of course, legislatures will be reluctant to allow this institution to have such powers. One way to deal with this reluctance may be to allow legislatures to opt into this. It could be a more gradual approach as others see how it works. An important thing to remember is that the power to table legislation, though it is unique and it enters into the realm of the Legislature, is still much less intrusive than the judicial power striking down legislation. It is also more effective.

Those are the points I wanted to get across. I would be happy to answer any questions on anything I have raised, or anything else with respect to the charter or to the division of powers, I suppose.

Mr Harnick: Mr Vegh, is there any other country you are aware of that has a social charter that is enforceable by an independent body other than a court?

Mr Vegh: Not that I am aware of. From what I am aware, there are no western democratic countries that actually have an enforceable social charter. My understanding is that India has a principle stated in its Constitution, an unenforceable principle, that certain social standards will be maintained. The Canadian Constitution of course has a commitment in principle of the provinces and the federal government to equitable services across the country, to reasonable access. Of course, that has not been enforced in Canada, and it probably could not be enforced because it is stated very vaguely. I do not think the courts really see it as enforceable. Second, I think the courts would be very reluctant to, say, get into the details of the Canada Health Act and scrap the Canada Health Act if it is found to be inconsistent with that section.

Mr Harnick: I agree with you that a court is not the place that should be developing social policy; it should be done by a government. The problem that I have, and I cannot conceive of a situation—I suppose if I thought long enough, I could think of something. There must be a time when a situation arises where you have to be able to obtain a fast remedy. The idea of a committee of some sort being set up to report, recommend, and table a bill if it has to is all well and good, but where do you go if you have to seek a fast remedy?

Mr Vegh: I do not know. I do not know if you would go to the courts either, because the courts cannot really provide fast remedies either.

Mr Harnick: Except that they can provide injunctive relief, and there can be something done temporarily until the matter is judicially determined. But even at that, I wonder if there is any fast relief that you can conceive would be necessary so that the system can be somewhat flexible.

Mr Vegh: My answer would probably be no. I think the questions involved when you talk about, say, entrenching a right to health care—I cannot really see how you would be able to go to court or some sort of institution like that and say, "We need an answer by tomorrow or else my right to accessible health care is threatened." There are of

course some social rights present in the charter. For instance, you saw the right to equality in the delivery of social programs. So you do stay within the judicial process in a way, and to the extent that there is an immediate harm that could be caused to you, you would still have the possibility of going to the court. I do not really see the social charter as dealing with things of immediate harm, but more fundamental policies.

Mr Harnick: Is this committee really something perhaps that a Senate could do? Are these duties that a Senate could conceivably look after?

Mr Vegh: The Group of 22 makes a recommendation that the Senate be, in a sense, reconstituted to be responsible for national social programs, or to oversee national social programs. I think there are problems with that. I think the Senate has its own problems and its own purposes, and I think that if Senate reform is what is being sought, it should be gone for directly. Also, the Senate is a federal legislative body, so it is restricted to the jurisdiction of the federal government. Those types of limitations are on the Senate, and I do not really think the Senate would be the body to implement social rights anyway. There is no real expertise in the Senate. I do not think the Senate is particularly qualified to do this.

Mr Bisson: My questioning, actually, is along the same lines as Mr Harnick's, and I think you have answered pretty well what I wanted to know. But one thing you had said at the beginning—you either were advocating for a limitation on the right of the federal government to invoke national standards or you have seen that as a problem coming up. I was not quite clear.

Mr Vegh: Perhaps I did not express myself clearly. I think the federal government is no longer in a position to really implement and enforce national standards. I do not think that there is anything theoretically the matter with it if it were to do that. It does not seem to be capable, or perhaps willing, to really play a role in national social standards any longer.

Mr Bisson: What would be the role of the federal government, then, if it does not have the ability to create national standards?

Mr Vegh: I suppose it depends on how ambitious this institution is to get. I think there would still be a role for the federal government that does things other than deal with national standards of social policy.

Mr Bisson: I guess what I am leading to, and as a politician a little bit nervously, is that at least in a system by which we have elected people who are responsible for putting together policies around social programs, we answer to somebody. If I, as a politician, go ahead and do things that my constituents are not happy with, they have the right—hopefully they will not—to turf me out in four years. That is one of the strengths within the system.

I see what you are getting at, and on the one hand I tend to agree with you. You cannot put everything in the hands of the judiciary because you get into the problems of not everybody having equal access. The other problem you get is limits on what you can do as a government, I think 10 or 15 years down the road, with the interpretation of the

charter as it goes on. On the other hand, by having that committee, we are again taking it out of the realm of public domain to a certain extent.

It is the first time that I have heard it. It is an interesting proposal.

Mr Vegh: It is not entirely taken out of the realm of the public domain. Ultimately, it is the responsibility of the legislatures whether they want to pass this bill, and it can of course be amended. The regular legislative process is not really disrupted except that a bill is tabled. So the Legislature does remain responsible. Perhaps it sets priorities a bit.

Mr Bisson: Have you bounced this off any of your colleagues? It is an interesting proposal.

Mr Vegh: It sort of came as a collaborative result of the frustration of not wanting to put together an idea where you have judicial enforcement, or even a judicial type of enforcement, because of the problem, as you said, of legislative responsibility. You do not want a body to have ultimate responsibility. At the same time, you do not want it to be a glorified law reform commission. I guess it is sort of a halfway house between two problems.

Mr Curling: Whenever I hear discussions about putting social policies, social rights into the Constitution—and I try to listen very carefully beyond the symbolism that is there. You put it there because of the symbolism. Many people are being deprived of their basic rights—

[Failure of sound system]

The Acting Chair: Mr Curling, could you hold on? We are having technical difficulties.

Mr Curling: Now that we are alive and kicking and the line is going—I am sure that you heard me. I was just saying that we are looking beyond the symbolism of putting social policies in the Constitution. Many people have been waiting for hundreds of years just to be treated equally, not to be discriminated against, just to get their basic rights to education and affordable housing. People feel that if you put it into the Constitution, it should be done.

What I am hearing you say is that this body itself could maybe effect this process and bring justice to bear. Considering the fact that there are institutions available right now that are supposed to do so, with a great backlog—you can even go as high as the courts, which are so badly backlogged, and human rights and workers' compensation itself. Do you not see that creating another institution and directing all of those rights to be dealt with under its jurisdiction, the backlog that will be created? It seems to me so far that the easiest process to deal with that, as Mr Bisson said—and you can respond to this—is that every four years, if the individual party does not deliver on the promises, then you make those changes accordingly. Are you saying this would be a much more efficient process of dealing with it?

1550

Mr Vegh: Well, you have made a few points.

First, on the issue of backlog, I do not really see this as working like a human rights commission or like a court in the sense that it is complaint-driven. I do not think an individual takes his grievance to this committee. Although they will hear grievances of individuals, I think it is more

process-driven, more long-term-driven. Of course, it is human and it will go at its own pace.

On the question of the effectiveness of changing governments every four years, I guess that is the ultimate question, that whenever we want anything to be put into the Constitution we should turn to our elected representatives. I think a common problem in the legislatures and in the courts is that in order to drive their priorities, there is a currency of wealth and power which is needed. It is very fine to say, "We'll boot the scoundrels out after four years and bring in a new government," but once that government is in power it has its own priorities it has to consider, it has its own constituency it has to deal with. This does, I think, help to focus legislative concern on a few issues that I do not think the democratic process and the once-every-four-year voting really addresses.

Mr Curling: You say it is complaint-driven. It will eventually come to that, actually, in the Constitution, that my rights have been denied and therefore the body I go to would have to deal with the complaint I have. Most of the people who are directed to these institutions are people who do not have the kind of money to fight in courts. Even the delay of a year or two—take, for instance, the case of AIDS today. The delay in order to deal with their case is a matter of life and death, and some people feel they are waiting for them to die and then it will resolve itself. I am saying it will come back down to the complaint level. No matter how you look at it in the sort of academic or holistic manner, the individual is being deprived of it. Where does that individual go and address it and get it resolved?

Mr Vegh: Again, I do not really see this as something to which the individual will go. It is not a court and it is not a human rights commission. It would not really be there for that purpose. It is difficult because we speak of the term "rights" loosely and we say the individual's rights under the Constitution are infringed and the individual wants to do something about that. That is why I am stressing the difference between social rights and, really, individual rights. I do not really think this is individually driven.

The Acting Chair: We just have a few more minutes, if there are any other questions by members of the committee. Mr Bisson?

Mr Bisson: No, actually I think it was answered by Mr Curling. As you were going on, it seemed to me that what you are advocating is an interesting proposal in the sense that it allows a mechanism by which to be able to have some protection in regard to those things that we find near and dear to us within this nation.

I am just wondering, does it somehow put us in a position where the legislative assemblies or the House of Commons would say, "I don't have any responsibility any more in that particular area." That is the bailiwick of this committee or whatever we would call it. Therefore, I become administrative as a government and they become almost our social conscience. Maybe that is where I am unclear a little bit. Exactly how far does that committee go?

Mr Vegh: I suppose it is a question of how far the governments want to go. The possibility of saying, "This is really a matter for this committee and not for the government," I

suppose, is present when anything is in the Constitution. You see that same problem with the division of powers, where they could say this is a matter of provincial concern or federal concern. It could be shirked off that way. Or when an issue of individual rights is before the courts, you could say, "Oh, this is a judicial matter and not to be dealt with by the Legislature." I suppose that is a problem no matter how you put an idea of social rights into the Constitution.

I think the focus of this institution on the Legislature in terms of reviewing legislative power and issuing reports—it will not always end up, of course, with the recommendation that certain legislation be tabled, but issuing reports criticizing what the Legislature is doing has the advantage of a purely reporting body in shaming the Legislature, to use a term, to bring attention to particular problems. So it does force the Legislature to act.

The Acting Chair: Mr Vegh, I want to thank you very much on behalf of the committee for the comments that you have made. Do you have any last words?

Mr Vegh: I have nothing to add. Thank you.

The Acting Chair: Thank you very much. I would like to remind the committee members that we are going to have a subcommittee meeting tomorrow. We will be meeting at 12 noon for lunch in this room, I believe, for the subcommittee. I just want to say that the committee will adjourn now to reconvene at 10 o'clock tomorrow.

Mr Curling: Just one thing before you adjourn. I want to make a proposal. I just wondered if we could get the Premier to come in and talk to us on the self-government document that he signed with the first nations people. I think it will be quite relevant to us to understand it a bit more. I wondered if I could put a request in to have the Premier some day, because this is the committee that is looking into all of this, and in the meantime things are being done there. I would like to know if I could put that request in.

The Acting Chair: Would it be appropriate for the subcommittee to talk about that and have that on the top of the agenda tomorrow?

Mr Curling: Whatever process it takes.

The Acting Chair: Yes? How is that with you, Charles?

Mr Harnick: Sure.

Mr Bisson: Just as a reminder to the committee, and it might be something the subcommittee would want to entertain, the mandate and terms of the committee are to basically seek the views of the people of the province in order to bring information to the Premier and to those people who will be responsible for putting forward whatever the position of the province is. Maybe the suggestion would be that we do it in the subcommittee, but just remember our terms of reference as being basically seeking opinion on the part of the people and allowing it to them.

Mr Curling: I am recognizing that. All I was trying to say was that I know the Premier is working pretty hard in this area, and while we bring people of the first nations in here, it would give us a better understanding of where he is

going in the meantime, so that we could even listen more attentively.

Mr Harnick: From the point of view of enlightening us, it would certainly help us in terms of the dialogue we are having and we propose having in the future with some of the native leaders we are going to be speaking with.

The other aspect to this is that the Premier had indicated that he would be providing us with a great many of the materials that are being worked on by the Ministry of Intergovernmental Affairs, in terms of some of the studies it has engaged in, some of the economic impact studies, perhaps, of Quebec separation and other areas that it is working on. To date, although I made a motion several months ago, we have not seen any of that documentation produced. I think it would be helpful to obtain that information, certainly in light of the study we have been doing and the witnesses we have heard last week and this week.

The Acting Chair: Taking your point, I think we should raise this at the subcommittee meeting and look into it. I think it is a perfectly legitimate cause to look at. Why do we not do that tomorrow at noon, if that is all right as far as that issue is concerned?

Do you have another issue, Mrs Marland?

Mrs Marland: Yes. I will wait till you finish with that issue.

Mr Bisson: It seems to me that one of the things that happened is that the request was made through the motion, I guess, about a month or two ago. The ministry came back and basically told us that there were no numbers and specifics in regard to the question that was asked.

Mr Harnick: I made a series of motions. They indicated they would provide us with whatever they could, recognizing of course that there was some information they had that was not complete, some that was sensitive, that they did not wish to make public, but that the studies they were doing, and they indicated they were doing many, for the most part would be made available to us. I believe that is something the Premier indicated in some of his

remarks would happen. It would be helpful, certainly in light of the information we obtained even today from some of the experts, because I would like to see what work the ministry is doing in the same areas.

The Acting Chair: We will raise those two issues tomorrow at the subcommittee meeting. Now, other issues. Mrs Marland.

Mrs Marland: Mr Chairman, actually, unless you have the answers, I have two questions to the clerk. One is, is the agenda for tomorrow, as far as you know, the same as the one that we had circulated at the beginning of the week? The one that I have says 10 o'clock, coalition of multicultural groups for one hour and then 11 o'clock, Doug Purvis, and 11:30, Guy Laforêt. In the afternoon there are only two presenters?

The Acting Chair: That is right.

Mrs Marland: The Canadian Council on Social Development and the Alliance for the Preservation of English in Canada at 2:30?

The Acting Chair: My understanding is that is tomorrow's agenda.

Mrs Marland: That is still the same?

The Acting Chair: Yes.

Mrs Marland: The other question I had was, did the clerk have sub slips today for Margaret Harrington and Shirley Coppen?

The Acting Chair: Yes. Those came in before the meeting began.

Mrs Marland: This morning?

The Acting Chair: Yes.

Mrs Marland: All right. Thank you. The reason I am asking that was that obviously when there is a significant vote and we are voting, we have to be members of the committee.

The Acting Chair: Yes, I understand that.

The committee adjourned at 1602.

CONTENTS

Tuesday 13 August 1991

Election of acting Chair	C-1325
Peter Hogg	C-1327
Peter Russell	C-1329
Kenneth McRoberts	C-1333
Association canadienne-française de l'Ontario	C-1339
George Vegh	C-1349
Adjournment	C-1353

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Le mercredi 14 août 1991

Select committee on
Ontario in Confederation



Comité spécial sur le rôle de
l'Ontario au sein de
la Confédération

Chair: Tony Silipo
Clerk: Harold Brown

Président : Tony Silipo
Greffier : Harold Brown

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Table of Contents

Table of Contents for proceedings reported in this issue appears at the back, together with a list of committee members and other members taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

Wednesday 14 August 1991

The committee met at 1018 in room 151.

The Acting Chair: I would ask the committee to come to order. First, I would like to say good morning to all the people in Ontario who are tuning in to the parliamentary channel to see the deputation by the Coalition of Multicultural Groups. Second, I would just like to say hello and welcome to each of you who have come before us today to make this deputation.

COALITION OF MULTICULTURAL GROUPS

The Acting Chair: I am wondering if you now would introduce yourselves for the record.

Dr Castrilli: Annamarie Castrilli, National Congress of Italian Canadians.

Mr Dotsikas: Peter Dotsikas, Hellenic Canadian Congress.

Mr Bernard: My name is Max Bernard. I am from the Canadian Jewish Congress.

Mr Folco: Alfredo Folco. I am from the National Congress of Italian Canadians.

The Acting Chair: Welcome to all of you here. As you know, you have an hour to make your presentation and also, I hope, to provide us some time for questions and answers.

Mr Bernard: I would like to introduce some of the other members of our delegation who are not sitting with us at the head table. Mr George Manios is president of the Hellenic Canadian Congress. Manlio d'Ambrosio is president of the Ontario region of the National Congress of Italian Canadians. Mr Jack Jedwab is the director of community relations for the Canadian Jewish Congress, Quebec Region.

The Hellenic Congress of Quebec is one of the three regional organizations which comprise the Hellenic Canadian Congress. Its mandate is to unify the different disparate Greek associations and communities concentrated in Quebec, while providing a voice for the Greek minority in the political life and social spectrum of the province of Quebec.

The National Congress of Italian Canadians, Quebec Region, has been and remains the main interlocutor with government officials dealing with the major preoccupations pertaining to the Italian community of Quebec.

The Canadian Jewish Congress, Quebec Region, is the official spokesperson for the Quebec Jewish community on all issues of public policy. Its primary objective is to protect the interests of the community and to this end it maintains ongoing contact at senior levels with government officials and representatives of the media and cultural communities. The Canadian Jewish Congress has historically been and remains at the forefront of efforts to protect and defend human rights.

These three regional congresses, the Hellenic Congress of Quebec, the National Congress of Italian Canadians, Quebec Region, and the Canadian Jewish Congress, Quebec Region,

together represent over 400,000 persons in Quebec. Nationally those three organizations represent almost two million Canadians. As cultural communities that have made important contributions in Quebec and in Canada, we feel that we have a vital role to play in the constitutional debate, both within Quebec and in the rest of Canada.

Alors, en décembre 1990, le Congrès hellénique du Québec, le Congrès national des Italo-Canadiens, région du Québec, et le Congrès juif canadien, région du Québec, soumettaient des mémoires devant la commission Bélanger-Campeau, laquelle avait pour mandat de se pencher sur l'avenir constitutionnel du Québec. En renvoyant nos présentations respectives devant la commission Bélanger-Campeau, nous avons identifié certaines positions communes à nos trois communautés. Une série de réunions furent convoquées par les Congrès hellénique, italien et juif durant lesquels furent élaborées nos préoccupations communes.

Nous croyions qu'il était nécessaire d'apporter au débat constitutionnel une gamme plus complète de visions et d'opinions telles que représentées par nos communautés respectives. Nous nous sommes mis d'accord sur le fait qu'il était essentiel de dépoliariser le débat, lequel gravitait généralement autour de concepts anglais-français.

Afin de gérer ce processus et de coordonner nos positions, alors que le débat évoluera au fil des mois, nous avons récemment créé un comité national de coordination qui prend l'initiative pour consulter et animer nos communautés et élaborer une position constitutionnelle détaillée. C'est ce groupe qui est devant vous aujourd'hui.

Our organizations and the constituencies they represent strongly endorse the following six major principles.

The Acting Chair: Before you get into the six principles, we did not, unfortunately, expect to have some French. Usually we have translation devices here for members of the committee, but we do not. Here they come. Perhaps we could just take one moment to put the devices into the hands of the members of the committee, then we will be prepared to respond to everything you are saying, instead of just parts.

Mr Bernard: I can do it in English. There is no problem with that, if that would be simpler.

The Acting Chair: The policy of the committee is to ensure that if you wish to use French, then we need to respond to that very strongly. Why do we not just take one minute and have the devices, or if you want to continue in English for a moment, we will get the devices out to the members of the committee, if that is acceptable to you.

Mr Bernard: Since the devices were not available to you while I was making that last presentation in French, I might just repeat that section in English, if that is acceptable.

The Acting Chair: Thank you.

Mr Bernard: What I said basically was that in December 1990 the Hellenic Congress of Quebec, the Quebec region of the National Congress of Italian Canadians, and the Canadian Jewish Congress, Quebec Region, each presented briefs before the Bélanger-Campeau commission, which was mandated to inquire into the political and constitutional future of Quebec. Upon reviewing our respective Bélanger-Campeau submissions we identified significant common ground among our three communities.

A series of meetings were then convened with the leadership of the Hellenic, Italian and Jewish communities during which we elaborated on our common concerns. Most importantly, we felt it was extremely necessary to bring to the constitutional debate a more complete cross-section of vision and opinion, as represented by our respective communities. We agreed it was essential to depolarize the debate which was essentially perceived exclusively in English-French terms. That is what I said earlier in French.

Perhaps before I get into the six points we agreed on, I should also repeat that the positions that had evolved and been identified by the Quebec delegations of our national congresses, being the common ground within the Bélanger-Campeau submissions we had made, have given rise now to the creation of a national steering committee which comprises the three national organizations that are here before you today.

That group is taking the initiative to go out into the country and travel all over. We are going to visit every single city of significance in Canada. I should take that word back; every major city in Canada; I apologize. We intend to consult and animate the discussion there within our respective cultural communities to find out from them what their views are on the constitutional future of Canada, and also to carry to them the message that we can bring to them from the various regions we represent; myself, for example, being from Quebec. Hopefully, at the end of that consultative process, we will have a much more detailed position on the constitutional initiatives which perhaps one day we can present to you, either in an oral or in a written presentation.

For now, the organizations and the constituencies we represent, almost two million Canadians, strongly endorse the following six major principles: first, that Quebec should and must remain a part of Canada; second, that a concerted effort needs to be made to rationalize Canada's political institutions, and that there should be a reassessment of the way in which this nation is governed; third, all three organizations have repeatedly reiterated their support for the French fact, and understand the Quebec majority population's sensitivity around the language and cultural questions; fourth, that as cultural communities, we clearly have certain policy issues that require consideration such as the protection of communal institutions and infrastructures; fifth, we share common views on a number of social and cultural questions, in particular, we agree that Canada is and must remain a pluralistic society committed to interculturalism and the promotion of human rights; sixth, any new constitutional arrangement should secure the resolution of the long standing legitimate aspirations of our native

people, including the fair and expeditious settlement of land claims.

I am going to switch to French, if that is acceptable.

Alors que d'importantes décisions concernant notre avenir sont à la veille d'être prises, nous pensons que tous les Québécois doivent comprendre toutes les ramifications de ces décisions. De même, nous pensons qu'il est important que les Canadiens vivant à l'extérieur du Québec soient plus renseignés quant à l'éventail d'opinions inhérentes au débat constitutionnel.

C'est pourquoi nous entendons poursuivre une campagne de consultation et de sensibilisation à travers l'est et l'ouest du Canada dans le but d'échanger des idées et des perspectives quant à l'avenir constitutionnel de notre pays. Nous pensons que ce genre de dialogue est essentiel afin de permettre aux Canadiens de toute origine de mieux comprendre les sensibilités existant au sein du Québec. Nous espérons sincèrement que nos efforts contribueront à maintenir l'unité nationale.

This submission to the select committee on Ontario in Confederation is obviously presented within the rubric of the constitutional coalition's position and action plan as we have described them to you. Again, we hope to be able to come before you at another time with a far more elaborate and detailed position. We thank you very much for your attention and we would be happy to answer questions.

1030

The Acting Chair: Just in terms of form, is this the end of your presentation in total?

Mr Bernard: That is the end of our formal presentation.

The Acting Chair: My heavens. I am sorry; I expected something a little bit longer in terms of response.

Mr Bernard: I would be happy to accommodate you, if you would like.

The Acting Chair: My understanding is, and tell me if I am wrong, that we have one hour for this. Before we go on to questions, is there anything the panel would like to add to the presentation that has been made?

M. Folco : Il y a peut-être un élément d'information qu'il faut souligner. C'est que nous avons été présentées comme la coalition multiculturelle. En fait, c'est la coalition de trois groupes, de trois communautés culturelles bien spécifiques, qui sont la communauté hellénique, la communauté juive et la communauté italienne. Ce sont les organismes représentatifs de ces trois communautés qui ont formé une coalition en matière de constitution. Nous ne prétendons pas représenter d'autres groupes que ces trois communautés culturelles. Je crois que c'est important de le faire noter.

Mr Malkowski: Thank you for your presentation, short and sweet, this morning. I have two specific questions I would like to ask. First, if Quebec decides to leave, what kind of impact will that have on each of your cultural groups? Second, in relation to the Constitution, do you have any ideas on how we could protect each community's rights concerning its education or language? Could you advise us on any recommendations you have.

Mr Folco: I think our position is quite clearly one where we are hoping that Canada stays a united country.

Nous espérons que des accommodations pourront être faites pour assurer que l'ensemble des constituantes soit satisfait. Cependant, nous tenons aussi à dire que la situation au Québec aujourd'hui nous semble avoir évolué. Les membres des communautés culturelles souhaitent le maintien de liens fédéraux aussi bien en matière économique qu'en matière politique. Cependant, nous avons de plus en plus l'impression, et j'avoue que c'est une impression, que les gens aujourd'hui ne craignent plus, n'ont plus peur. Les gens nous disent, «Nous souhaitons le maintien du Canada mais nous resterons quelle que soit l'issue du débat».

I think we have gone beyond the situation where people were saying, "We're leaving tomorrow morning if things don't go the way we want them to go." We believe very strongly that a vast majority of people within our cultural communities are hoping for a united Canada, but they will not leave the morning after if there is a crisis, if it does not work out that way.

En ce qui concerne les questions éducatives, évidemment nous avons des préoccupations aussi bien au niveau du maintien des langues d'origine, et je pense que ce sont des préoccupations connues. Il y a déjà eu des présentations faites par nos communautés en Ontario au niveau de l'importance de maintenir ces langues d'origine, dans le domaine du multiculturalisme proprement dit.

Nous sommes convaincus que le concept de multiculturalisme deviendra un concept opérant et un concept efficace dans la mesure où il s'appliquera à tous les Canadiens sans distinction. Nous croyons qu'il est faux de parler de multiculturalisme s'adressant uniquement aux membres des communautés culturelles. Il faudra en arriver à définir un concept qui s'appliquera à tous où les cultures nationales et la culture d'origine de chacun pourront être valorisées, mais sans créer la situation actuelle où on parle de culture minoritaire, de culture plus faible ou de culture plus valable. Nous croyons que tout le concept de multiculturalisme devrait être revu, révisé, mais ce serait peut-être prématuré ; ce ne serait peut-être pas l'occasion d'en discuter.

Mr Bernard: If I might just add one short word, I think Mr Malkowski's second question also concerned itself specifically with the protection of minority rights within Quebec. Speaking as a Quebec person now, changing hats for a moment, I can tell you the sense is that the protection of minority rights within Quebec is something that very clearly people have to be concerned about. That has to be worked on, that has to be promoted, that has to be emphasized. But that does not mean there is a fear that should Quebec decide to declare independence or become sovereign in some fashion, the situation vis-à-vis the minorities is going to become worse. I do not believe that fear exists within Quebec.

Clearly, to the extent that cultural or linguistic issues create situations where choices have to be made such that if you are promoting a culture and a language you are on occasion, as has been done in Quebec, let's face it, with Bill 101 and Bill 178, limiting and restricting in sometimes very drastic fashions the uses of other cultural and linguistic rights, then that is a very negative aspect we have to work on.

I think that within Quebec that can be worked on quite successfully as time goes on. There is not a fear that the situation is going to become drastically worse should sovereignty occur.

Dr Castrilli: I would just like to add to what has been said in response to both the questions that have been posed, which are excellent ones. The first thing I notice is that this group represents an optimism, a guarded optimism but nevertheless an optimism. We would not be together at the national level if we thought we could not help Canada stay together. That is the first thing.

We also see very strongly a theme of partnership between groups within provinces. Before you here you have a very strong Ontario-Quebec contingent which has worked together for some time. Our own presentation—that is, the presentation of the Ontario region of the National Congress of Italian Canadians—before you last spring emphasized the spirit of partnership and the role of leadership that Ontario can play in partnership with Quebec in order to make sure Canada stays together. Those things are of importance. Now that is going to have to require some rethinking and some reform, and that is what our six points are about.

Clearly, current institutions cannot continue in the way they are if they are to accommodate the aspirations of minorities in Quebec and elsewhere. This is not a nation that has paid a great deal of attention to minorities in the past. We may be ahead of other democratic countries, but we have some very specific problems, and we can see them all across the country, as minorities are concerned about where they fit in the scheme of things.

This is an ample opportunity for us to review who we are as Canadians. I submit that we are essentially a nation of minorities that need to be accommodated and work in unison and I think this coalition would agree that we can do that. Hopefully, we can provide some useful suggestions for that in the future.

1040

Mr Dotsikas: I agree that this is a group that represents a certain amount of, I should say a great deal of, optimism that the unthinkable will not happen and Quebec winds up going its own way. I hope Max is right that if in fact Quebec does decide to leave, communities within Quebec will have the protection they have come to enjoy as part of a larger family of Canada.

However, within our own community, within the Greek community across Canada, we have debated this at great length. There is also the worst-case scenario, which is the one that concerns me the most. Whenever nationalist sentiments are whipped up into a frenzy, we see what impact they have had in other parts of the world. While we have not seen some of the more extreme cases happening in Quebec right now, the passage of things like Bill 178 and the use of section 33 of the Charter of Rights to override a Supreme Court decision, talk—probably not one of the more popular views in Quebec—of perhaps busing various minorities to areas where there is a larger French community, things like that make someone like myself from Ontario, who perhaps has not learned to live with the nationalist

fact in Quebec, concerned. Will there be respect for individual and minority rights in an independent Quebec?

We all know from historical experience that when national self-determination rears its head, minorities are the first to suffer. That is a concern we have to have. Nevertheless, that is the worst-case scenario. Hopefully, through committees like this right here and coalitions like our group before you, we will never find out.

Mrs Marland: I am proud to tell you that I am a life member of the Mississauga Hellenic Association and my name is Bouboulina. I am always amused by the number of Greek people who cannot tell me who Bouboulina is, although I could take you to my office down the hall and show you a portrait of her and the Greek flag hanging there, of which I am very proud.

It is interesting to me that you are representing the Greek, Jewish and Italian people, and I am wondering whether you invited other multicultural groups to be part of your coalition. That is my first question.

Mr Bernard: I can answer that one very quickly. The answer is no. The reason for that is that our coalition came together because of those briefs that had been presented to the Bélanger-Campeau commission in Quebec, because those three particular briefs seemed to have a lot of common ground. The effort involved in putting together a coalition and starting to work out some common positions is a fairly extensive one. We have had a lot of meetings and we have developed a terrific understanding and a great rapprochement, understanding each other in terms of our thinking on the constitutional issue. We simply have not physically had the time or the energy yet to integrate other groups. They are welcome. We do have some hope that they will agree with our positions. If they do not, we think it might be preferable if they formed their own associations or made their own representations.

Mrs Marland: I think it is wonderful that your three groups are together. I also was trying to copy down, because we do not have a copy yet of your presentation, your six points. I was really encouraged by the broad concept you are looking for in your six factors, your reference to the settlement of land claims for native people, for example. We had a group earlier this week which was talking about, how can we talk about bilingualism in a country like Canada when we have 56 native languages that are not part of bilingualism? It is interesting to hear you say that we are ahead of most other democratic countries in terms of treatment of our minorities. When we talk about the Constitution of Canada, when are we ever going to talk about how to enshrine in that Constitution who a Canadian is, what a Canadian should be? Is our entire country not made up of minority groups in different numbers, if you go back to our origins, and would we not be farther ahead to decide that we are not going to perpetrate this minority group or multicultural segregation, as I see it, and talk about Canadians under a Confederation and a Constitution for their country as a Canada recognizing the history and inherent makeup of our peoples?

Mr Bernard: There is not an inherent conflict in what you say. Very clearly, if we look at the United States as

simply being a flagrant example that is right on our borders and everybody can understand at least some of what goes on there, the fact of the matter is that the way the Constitution of the United States is worded is by a declaration of who Americans are, what they are all about, what they are looking for, what their vision is of the world and the way they should live in it. That does a great deal to promote the ability of Americans to identify with the concept of being an American. The symbolism attached to it and the meaningful words that are contained in there are felt by quite a number of Americans to be very important to them.

We seem to lack that in Canada. Surely in revising a Constitution and making a new Constitution, somebody could just talk about what Canadians are all about, what the morality is, what the fundamental issues are that make us Canadians that we identify and that we value, what the value is of being a Canadian. I think that could be the first part of the Constitution and probably the most important part.

Together with that is to develop a Canadian identity. The Canadian identity has a lot of social and cultural components to it, but it also has some very clear pragmatic elements to it, such as, for example, economic components. How do we want to spend our budget? What do we want to do with the money? How do we want to deal with issues like medicare and so forth? Those are issues that define us as Canadians and perhaps distinguish us from every other country in the world. Once we have dealt with some of these pragmatic issues and some of these great issues of principle and agreed on them, then I think we will have something with which we can readily identify as Canadians. That is part one.

Part two is, does that necessarily then exclude the concept of my being a Jew in Canada, or Mr Folco being an Italian or somebody else being a Sikh? I think the answer to that is absolutely not. We value our traditions. We value the particular racial, ethnic, religious or cultural groups we belong to and there is absolutely no reason why we should stop doing that simply because we also, and importantly, value being a Canadian and can identify with the concept of being a Canadian. Those are not concepts that are in opposition, and I think it is really drastically important that we start thinking in those terms and start concretely applying those terms.

Mrs Marland: Do you think we should continue our hyphenation of whatever our country of origin is, plus Canada, or do you think we should start calling ourselves Canadians?

Mr Bernard: I do not have a problem with doing both. I have no problem in certain contexts, when it is appropriate, to say I am a Canadian, and I have no problem in other contexts, where it is appropriate, to say I am Greek or I am Jewish.

Mrs Marland: No, I am talking about Anglo Canadian, Greek Canadian, Chinese Canadian, Afro Canadian. I am talking about that kind of thing.

Dr Castrilli: But with respect, we do that already. I think that is the thing to bear in mind. We say French Canadian; we also say Canadian. We say English Canadian; we also say Canadian. What you are really asking is,

should other ethnic groups be allowed to use their particular ethnicity as a—

Mrs Marland: No, I am asking should any ethnic group—Anglo; any—is it necessary for us to have two identifiers or can we just be Canadians?

1050

Dr Castrilli: You will not be able to abolish it. I think the reality is that all of us in Canada subscribe to an ethnic origin of one sort or another, whether we are loyalists from eastern Canada, whether we are French Canadians, habitants, whether we are Italian Canadian. We simply do it. It is a fact of life. Perhaps that is what we are as Canadians. I would argue, and indeed it has been successfully argued, that it is that multicultural aspect that makes us Canadians. You cannot eradicate it. You will not be able to eradicate it by an act of Parliament. You will not be able to eradicate it simply because there were some fringe groups that say we must all be Canadians.

What does that mean? I would bet that when you go back to the very groups that say we should not be hyphenated Canadians, they cling to certain traditions that are uniquely their own and that are also uniquely Canadian by the fact that they live in this country and practise those practices and share them with others. That is one of the fundamental riches of Canada.

I have just recently come back from Israel, which is a country that is about as multicultural as you can get at this point. They have people from Ethiopia, people from Russia, people from everywhere in the world. They are hungry for them to come and welcome them and cherish their practices, and they live together in a great deal of harmony. I think we could learn a lot from that model. I think many of us already practise that, and that is what I would like to see front and centre in the Constitution.

Mr Dotsikas: If I could just add to that, I think to a great extent it is something that is imposed upon us, more so than something we wish to have. I feel that my Greek culture is a private thing and that my last name—unfortunately, automatically, as soon as I mention it, someone will question my commitment to Canada just by the mere mention of a last name that is not Anglo-Saxon or French. When the Orangemen parade down University Avenue, nobody questions their loyalty to Canada, yet when the Greeks parade on March 25 to celebrate the independence of Greece, their commitment to Canada is questioned.

I think we are all Canadians at this table first and our commitment is to this country more than anywhere else. I just believe that this perception that multiculturalism somehow questions our commitment to Canada is a problem created by the politicians rather than by the members of the various cultural groups. It is a culture; it is not a commitment to a foreign country.

When you see, for example, Japanese Canadians who want to have redress for the way they were treated during the Second World War having to deal with the Minister of State for Multiculturalism and Citizenship rather than the Minister of Justice, to me that is an indication that the Anglo and French fact in Canada has decided that all the ministries will deal with the Anglo-French problems and

we are going to have one ministry of multiculturalism, or in the case of Ontario the Ministry of Citizenship, and that is where the ethnics will go. I think it is a problem from above rather than one from below.

I know from our personal experiences within the Greek community that on numerous occasions we have had gatherings that had absolutely nothing to do with our culture, but perhaps with enhancing trade and finding a link between Ontario and Europe to develop trade and bringing in members from the Greek community to see how we could co-ordinate efforts from Ontario, perhaps using Greece as a base for a foothold within the European Community to develop trade. On something like trade, instead of sending the minister of trade to us, who do we get but the minister of citizenship and culture. I hope I am not taking too much time, but I think it is also a problem from above down.

Mrs Marland: Good point.

M. Folco : La question qu'a posée Mme Marland est une question que nous considérons fondamentale. D'ailleurs, une des raisons pour lesquelles ces trois groupes sont ensemble, c'est aussi parce qu'ils sont préoccupés par la définition de ce qu'est un Canadien.

Cependant, nous percevons cette problématique d'une façon un peu particulière. C'est peut-être aussi teinté par le fait que certains d'entre nous sont du Québec. De plus en plus, il nous apparaît que c'est une problématique qui est à trois paliers, à trois niveaux très différents et qu'elle ne se résume pas uniquement à des questions linguistiques ou à des questions culturelles. Il est évident que, actuellement à travers le Canada, il y a des gens venus d'ailleurs, ou nés au Québec ou en Ontario ou en Alberta, mais d'une autre origine qui parlent l'anglais ou le français.

Au Québec, vous avez des personnes d'origine italienne qui parlent le français comme langue de communication et vous avez des personnes d'origine italienne qui parlent l'anglais comme langue de communication usuelle. Quand on parle de francophones et d'anglophones dans ce pays, on parle de plus en plus de francophones ou d'anglophones qui ne sont pas nécessairement de souche française ou de souche anglo-saxonne. Ils utilisent une langue véhiculaire, une langue de communication. Nous croyons que, aujourd'hui, on ne peut plus diviser le Canada en Canada anglais et en Canada français puisque en fait le Canada anglais en Ontario est formé de personnes qui utilisent l'anglais quotidiennement et dont la culture d'origine n'est certainement pas une culture anglo-saxonne. Donc, déjà il y a un premier niveau de dualité.

Pour revenir à la question du bilinguisme, qui a été mentionnée tout à l'heure, le bilinguisme n'est pas lié au multiculturalisme ou au respect des valeurs des communautés culturelles, des cultures d'origine, puisque ce sont les deux langues véhiculaires utilisées par l'ensemble des Canadiens, soit le français et l'anglais. Je pense que c'est une réalité qu'il faut accepter. Invoquer les 332 langues parlées au Canada n'est qu'une façon, je pense, de ne pas vouloir reconnaître la réalité linguistique de ce pays. On peut venir de la Jamaïque et parler anglais; au Québec il y a des gens qui viennent de la Jamaïque et qui parlent français. C'est un fait acquis aujourd'hui.

Le deuxième palier qui nous semble extrêmement important c'est qu'un Canadien, pour nous, est une personne qui adhère et qui reconnaît un certain nombre de principes fondamentaux qui font consensus dans ce pays. Il y a l'idéal démocratique et la question du rôle, du positionnement des femmes dans notre société qui font consensus. De plus en plus, la question des autochtones fait consensus. Il y a certaines valeurs sociales et culturelles, notre attachement à un système où les droits fondamentaux sont respectés, qui fait consensus. Le fait que les personnes, quel que soit leur degré de richesse ou de pauvreté, peuvent recevoir des services de santé fait consensus. Pour nous, être Canadien c'est s'identifier aux valeurs que cette nation s'est données depuis des centaines d'années.

Il y a cependant un troisième niveau : nos cultures d'origine, et dans ces cultures d'origine il y a certaines valeurs qui sont spécifiques. Ça peut être le concept de famille qui est particulier, ça peut être l'attachement aux cultures d'origine que peut-être certains d'entre nous ne connaissent que par ouï-dire. Je ne suis pas un Italien. Je suis d'origine italienne, mais il y a un attachement à des valeurs privées et à des valeurs socioculturelles qui, je crois, forment un tout qui est positif pour le Canada.

Notre culture canadienne est une culture en évolution. Il y a 50 ans, elle ne se nourrissait qu'à quelques souches. Aujourd'hui, il y a des auteurs d'origine italienne qui écrivent en anglais et il y a des auteurs d'origine juive qui écrivent en anglais et qui ont apporté leurs propres éléments culturels et qui ont renforcé la culture du consensus. Mais toutes ces choses ne sont pas contradictoires. Là où il y a une erreur c'est quand on fait du multiculturalisme quelque chose qui s'adresse à une population qu'on identifie en disant qu'elle est d'une certaine pauvreté culturelle, d'une certaine marginalité. Ce n'est pas une question de respect des droits : ce n'est pas une question de canadienité. Nous sommes tous des Canadiens.

Si notre coalition s'est formée, c'est que nous croyions que le Canada sans le Québec et le Québec sans le Canada ne pouvait pas avoir cette richesse et ce dynamisme économique, culturel et social que nous pourrions avoir en vivant tous ensemble.

1100

Mrs Y. O'Neill: Thank you so much. That was very helpful. I would just like to say that the role of an MPP has many challenges. It also has a lot of privileges. One of the privileges I have had because of the kind of riding I live in is being welcomed into the minority communities. The Hellenic community centre is in my riding. I might say that when I opened it the Minister of Tourism and Recreation was there to open it with me. That was in the previous government of this province. I hope that tradition is being maintained.

I have sung O Canada much more in the multicultural communities in Ottawa-Carleton than I have in whatever you want to call the other communities. But it always seems the Canadian flag is flying with whatever country I happen to be sharing a festival with. I know that all the cultures are much more than festivals; however, I am going to open the Greek festival in Ottawa tomorrow and I

am happy to do that. I celebrate Greek Independence Day with a great deal of fondness. Certainly democracy is very much a part of that celebration.

That all being said, I want to say one other thing to you that is of a general nature before I ask a question. I am really pleased that you have expressed yourself as clearly as you have because when we had our hearings in the winter—and we did extensive hearings, as you know, over 600—some people came before us talking about English Canada and French Canada. I questioned some of them, because I really do not think there is such a thing as English Canada. The only province that is bilingual legally in this country is put in with the English provinces, so that in itself is a very obvious contradiction, plus all of the other real contradictions that the term English Canada brings forward.

I think your explanation really has been helpful of what being a Canadian means. I listened to your six points and it was very difficult to pick them up as you read them. Although I have heard you say things that may lead me to getting a positive answer, do you then want to work towards the Canada clause concept? Is that one of your fundamental platforms as it will finally evolve, do you feel?

Mr Dotsikas: I think that in recognizing that it is a pluralistic society, which is our point 5, and also adding to what Max said about the American example of who we are as Canadians, a Canada clause would be one way of expressing what Canadians are, recognizing that there are two founding languages, that there are a first peoples who were here long before anybody came here. In that respect it includes the various groups that have come in. Perhaps a way of getting around this is to say there is an anglophone Canada and a francophone Canada as opposed to an English and a French Canada. For someone in Ontario, I consider myself an anglophone and I struggle with French every now and then. You can recognize that there are two languages, but many people who speak those languages from many cultures. A Canada clause hopefully would say who we are as Canadians and perhaps that would address your concerns, as well as how we get around this hyphenation. How do we recognize the multi part without watering down Canada? A Canada clause may just do the trick.

Mrs Y. O'Neill: Could you just briefly tell me a little bit about what your plans are in eastern Canada and Quebec? You said you were going to visit major cities. Could you just give us a little idea of the kind of contacts you have made and what your time lines are for your work?

Mr Bernard: Yes. This fall we have basically booked—right now—trips that are going to take us right across the country. We are going to be going to all the western cities, all the way out to Vancouver, all the major ones, Regina, Saskatoon, Winnipeg and so on; I am not going to name them all.

Mrs Y. O'Neill: I am trying to find out what you have in the east. I am more familiar with the communities in the western provinces. Do you have large groupings of people who actually would form a coalition in the eastern provinces?

Mr Bernard: Yes, but the objective of these particular travels we are going to do is to meet with our respective

community members. So we do have them right across the country.

Mrs Y. O'Neill: You do? In the east as well?

Mr Bernard: In the east as well, definitely. That is part two of our trip, which is going to happen immediately afterwards. We are going to be going to St John's and Prince Edward Island and so on and we are going to Halifax, all the major cities in.

Mrs Y. O'Neill: Then you will meet with people in Quebec as well?

Mr Bernard: The Quebec representatives of the delegation are going to be going outside of Montreal. There is a definite concentration of anglophones and Greek, Italian and Jewish people within the community of greater Montreal. Clearly we have identified the fact that outside of Montreal there is a lack of exchange: intercultural exchange, information exchange, just dialogue. To promote that we are going to be going within the province, to other regions of Quebec, to promote this exchange and just talk about our constitutional options and what it means to be a Canadian and the kinds of questions we have been discussing with you here today: what it means to be a Quebecker, what it means to be a Montrealer and what it means to be from St-Jean-de-Brébeuf. They are very different kinds of things, clearly.

Mrs Y. O'Neill: Bonne chance.

Mr Bernard: Thank you very much; we need it.

M. Winninger: Je voudrais examiner le deuxième principe que vous avez articulé ce matin.

Mr Bernard: Let me give you the anecdote, then answer you very seriously. The anecdote is that I was once told that whatever the proposal is we put forward, dittoed or otherwise, we should put forward the most stringent and strident proposal possible, because we have to leave it to everybody else to then compromise it and water it down. So clearly that is going to happen, but 125 years of history have gone by since our particular political institutions were created. Times have changed and they are not necessarily serving the population in the way they should at the present time. The federal Parliament has just gone through a revision of its parliamentary rules. There is nothing wrong with doing that.

We may not, as individuals, agree with certain changes but the fact of the matter is that change at a time when things need changing is good. As a coalition we endorse the concept that at this particular time in Canada's history change is required. That is very clear. What the particular nature of that change should be in terms of the Senate or in terms of other political institutions—also you have to expand the thinking to include programs, not just a Parliament. You have to think about medicare, for example, or ministries or whether or not the Charter of Rights is going to continue to have precedence so that you are emphasizing certain fundamental rights. Are you going to emphasize individual rights? Are you going to emphasize collective rights? Those are all part of what we mean by revising our political institutions—how we as Canadians are governed.

The concept we are putting forward is a little bit like zero budgeting in accounting. Let's not come to the table with all the prejudices and the baggage we bring with us in terms of having had these things, but let's rather come to the table with an open mind and see what we can do in terms of putting together a political system that works in the interests of all Canadians rather than working against the interests of some Canadians and in favour of others.

Mr Folco: Let me add something quite short. We believe that the changes cannot be cosmetic. They will have to be serious changes but we have already had le rapport Allaire in Quebec, le rapport Bélanger-Campeau, the Beaudoin-Edwards and the Spicer. I am sure this committee will present a brilliant report that will help all of us in better understanding the different constitutional options. The federal government will be presenting, in September or October, its own position on this issue. What is quite clear is that we as a group do not have the pretension of being capable of choosing where each and every item selected in le rapport Allaire and in Bélanger-Campeau should go. Should it be provincial or federal? Should it be decentralized at the municipal level?

What we do know is that there is a need for substantial non-cosmetic change. What we do know is that there are a lot of groups right now that are doing some serious work. For example, you might be presenting the options that could be acceptable in Quebec, in western Canada, in the Maritimes, or whatever. What we are saying is that we are going to be looking very closely at everything that will be presented in the next few months because we know there are deadlines. The deadlines are coming soon, and the deadlines in Quebec are coming quite soon.

I want to stress the fact that this is not a cosmetic crisis in Quebec; it is a real crisis. We will, I hope, be able, as three groups that have formed a coalition, to have something more concrete in the next few months. We will be presenting that within our communities, but I think the situation is still evolving right now.

1110

Mr Bernard: I just wanted to add something very briefly, and that is the role of Ontario in this particular issue; the reform of the political institutions. It is absolutely crucial.

Ontario is in an extremely favoured position in order to be able to work towards the kinds of reform that we are talking about and that we feel are essential in order to maintain national unity. The economic base is here, the cultural representation is here, the political influence is here. Let's not kid ourselves. You represent a large group of the population so you have the demographic mass, and there is no question that Ontario's views are going to be very central and very importantly considered. Your role as a committee obviously is central to the whole issue of national unity, which is why we are very happy to be before you today.

Dr Castrilli: One final point I would like to make in response to the question is that the political institutions in this country, in this province, in other provinces, cannot continue to ghettoize and alienate Canadians, and that is the system upon which our institutions have been based.

We have had some reference before as to the division of responsibilities. Some Canadians have access to all ministries and all ministries respond to them. A majority of Canadians are hived off to smaller ministries like multiculturalism, like citizenship. That is something that has to be rethought. It is something that we do not find acceptable, and it is something Ontario can take a very strong leadership role in, given the very diverse population of Ontario.

Mr Offer: My first question has been, in large measure, responded to by that last comment. When we speak about ministries of culture and multiculturalism, there is a purpose and a reason and generally very good work is done. Are they becoming almost a barrier to the full expression of the multicultural interest by almost being convenient funnels to address all interests of the multicultural community, even though many of those interests should really be addressed in other areas of responsibility? I would like to get your reaction to that particular comment.

I have a second question. Because you are representatives of different groups, but all within the Quebec region—

Mr Bernard: No.

Mr Offer: Okay. Could you please tell me, because I see in your brief it says "of Quebec," "Quebec region" and "Quebec region."

Mr Bernard: Amend the first page. I think we dealt with that at the very beginning. It is the Hellenic Canadian Congress, the National Congress of Italian Canadians and the Canadian Jewish Congress. There was a typo on the first page.

Mr Offer: I would like, notwithstanding, to ask for your comments, second, on this: In Quebec "distinct society," "special status," a phrase such as that, is of crucial importance, and I am wondering whether you might comment on whether any proposal for constitutional change which does not contain a phrase of that nature would be acceptable to Quebec, and second, whether any change within the Constitution that does contain that phrase would be acceptable to many regions outside Quebec.

Mr Bernard: First of all, I think we are going to reserve comment on that question on the "distinct society." Let me just explain to you why very briefly. The fact of the matter is that there is an awful lot of discussion going on right now as to whether using language such as "distinct society" or "self-determination," or whatever language you want, is a cosmetic issue or a substantive issue.

What we are trying to do is to say to you as representatives and to everybody we talk to in the country: "Listen, we are not here to comment on cosmetics. We are here to comment on substance." As far as substance is concerned, we have some very definite views. Quebec should be part of Canada. Political institutions, and that includes Quebec's political institutions, need to be reformed. Whether that results in some kind of balance weighted this way or that way is something we will comment on and you will comment on and we will have occasion to talk about, but that is the substance we are really concerned about.

Whether having a phrase or not having a phrase is going to fly in Quebec or is not going to fly outside Quebec is

a separate issue and we are not going to comment on that, because to us that is far less important than the substance. If the substance could be addressed and there could be some understanding right across the country on what we together want to see as Canadians, whether we happen to live in Quebec, Manitoba, Ontario or Halifax, then I think it is going to become far less important whether there is a particular phrase that describes a part of the country, be it Quebec or any other part. It is going to become an issue and it will get resolved, but we suggest it take a second-level priority.

That is how I would like to answer the question. I am sorry I interrupted you.

Dr Castrilli: No, I wanted to respond to the first point, not the second point. I will defer until such time as the second point is dealt with.

Mr Dotsikas: Perhaps I could just add about the second point that clearly in our submission in point 3, where we express our concern and our sensitivity towards the French factor in Quebec, whatever language is necessary, whether substantive, cosmetic or however it works out, our concern is that both within Quebec and outside Quebec—I am from Ontario—when it is all said and done, the French factor in Quebec feels confident with the way its particular language needs and cultural needs have been dealt with. However that is done is going to be something that evolves with the process, but it is important that Quebecers feel confident about their language and their culture, and however that is done is to be seen.

1120

Dr Castrilli: I think you have probably gathered there is unanimity on that issue with respect to our coalition. I wanted to address the first point, which I think is an important one.

I have already said we do not like ghettos. Many of us oppose the creation of a department of multiculturalism at the federal level because we see it as a means of ghettoizing, as I have said. There is a tendency when one thinks of multiculturalism to think of immigration issues. There is a tendency to think of multiculturalism as something less than full citizens. I submit to you that is erroneous. I do not know how you can say that to individuals of Italian origin who have been here 150 years, and there are ample examples of that. They are told the department of multiculturalism will look after their needs, for instance, like the Japanese Canadians involved in the issue of redress for wrongs committed during the Second World War or like Canadian citizens of Italian origin whose major crime was that they had a name most people could not pronounce. It had nothing to do with political activities. No one was ever charged.

As was pointed out, the minister handling that is not the Minister of Justice, responsible for justice issues across this country, but the Minister of State for Multiculturalism and Citizenship. That borders on the offensive and it speaks the kind of attitudes there are in this country. That is no longer acceptable; it simply is not. There is no rationale, for instance, for second-language programs within multiculturalism. Those properly belong to immigration or to education. It does not belong to multiculturalism. Multi-

culturalism means Canadian citizens. It is directed to Canadian citizens who have different cultural origins and that includes all of us, not just the non-French and non-English. To the extent institutions perpetuate that concept, they will become increasingly irrelevant.

Mr Dotsikas: Perhaps I could just add to the first point really quickly.

The Acting Chair: Actually, we have gone overtime, if you would be very brief.

Mr Dotsikas: Yes, I will be very brief. I mentioned earlier my previous views on the whole question of multiculturalism and how the political process has treated these groups who see themselves as Canadians. I did not appear within a vacuum. I have a family; my family has a family and they happen to come from a particular part of the world. As a matter of fact, I was born in Greece. I came here when I was very young. I celebrate my cultural background. My commitment to Canada has been proven in the past and it is the only country I feel I have allegiance to. However, in my dealings with politicians of all political stripes, both federally and provincially, I am seen as an ethnic and I am treated as an ethnic. That concerns me because it is not my doing, it is somebody else's doing.

Just a quick point. I will very briefly tell you something I told Max the first time I met him. I think you can learn a lot from our group in the fact that we have come together. I said to Max, our three different cultures are very old. Over the past 2,000 years they have come into contact with each other in other parts of the world, not under the most pleasant of circumstances, yet we find ourselves in the New World and we have managed to overcome those differences. If we can do that, then I think all Canadians should be able to overcome their differences. The fact that we are here together should be, hopefully, an inspiration for everybody else to find a solution to the mess we are in right now.

The Acting Chair: I want to thank you for coming before the committee today. It is very helpful indeed to have representatives from Quebec and from Ontario speaking about this very important issue. We will certainly take note of the comments you have made to the committee, and we hope that when you go back to your respective groups, if you have other documents you can send to us on positions you are taking, or even questions you have for this committee, please forward them to the committee through the clerk as soon as you possibly can. Thank you very much.

DOUG PURVIS

The Acting Chair: I would like to call at this point Professor Doug Purvis to come before the committee. Good morning, Professor Purvis. Before we begin this part of the hearings, could you introduce yourself and indicate what university you are from and some of your background for the record.

Dr Purvis: Thank you, Mr Chairman. My name is Doug Purvis. I am in the economics department and the school of policy studies at Queen's University, and currently director of the John Deutsch Institute for the Study of Economic Policy at the university.

The Acting Chair: It is good to have you with us. You have 30 minutes and hopefully you will leave some time at the end so that we can question you.

Dr Purvis: What I would like to do is make some preliminary remarks for about half that period, then invite questions for the second half. I would like to thank you for the opportunity to appear before you and present some views on what is clearly a most compelling issue, not only for Ontarians but for all Canadians.

I appear before you in perhaps a slightly unusual position for an economist in that I think, basically, a large part of my message is a good-news message. Economists are usually condemned as being the disciples of the dismal science. I say it is a good-news message in the following sense: Virtually all participants in the constitutional discussion agreed that preserving and enhancing the Canadian economic union is essential to ensuring prosperity. I want to reinforce that message before you today, but I also want to warn you that with that commitment to the economic union comes considerable other baggage, if you like, or commitment or obligations that I do not think all participants who have sworn their allegiance to the economic union have fully recognized. I wanted to use a little bit of my time today to try and identify what that baggage is.

As my preamble or my subtheme, what I would put before you is that I believe a strengthened economic union can be and, indeed, I think must be the cornerstone to securing national unity.

The other side of the coin from the good news of preserving the economic union and the benefits that flow from that, I believe, is that the sovereignty or the two-successor-state scenario being considered by some participants in the debate to my mind entails significant economic costs to both of the successor states encapsulated in that view of one possibility. I do not want to use my time here to articulate in great depth what those costs would be, but it is pretty easy to pinpoint in both Quebec and the rest of Canada key sectors that would be certainly made vulnerable by a loss of the political union between the two states. In Quebec, textiles and dairy are the obvious sectors that would be vulnerable. In Ontario, I think the automobile sector would be somewhat at a risk.

But it is broader than just identifying particular sectors that would lose some of their protected market status. The ability to continue with or negotiate new international treaties would be very much at risk for both states. The political instability and uncertainty that would be attached to even the most optimistic view of how one would negotiate a political split would clearly put at risk our ability not only to attract foreign investment but in fact to retain the significant elements of foreign investment key to both parts of the country.

I think this notion of our situation of Canada in the new international world encapsulated by the phrase "globalization" that we all hear so much about is an important dimension of the debate in terms of the economics of the situation.

The silver lining to that black cloud is that I think the eventual acceptance of that analysis—and I feel very confident that that analysis is, in fact, the correct one, that the

economic costs of the two-successor-state possibility are really, truly significant—will provide strong incentives to both sides to negotiate hard and strong to secure a resolution to our constitutional impasse. So even in that bad news one has to actually focus on the silver lining aspect of it.

The other preliminary remark I would like to put on the table is that at this juncture Canada desperately needs constitutional renewal to ensure that our economy can adjust to the new realities of the world community in order to provide Canadians with the kind of prosperity and freedom we have come to take for granted over the last quarter of a century.

This catchphrase “globalization” gets bandied around a lot, and the implications of it are far from clear for many aspects of economic policies. It is not exactly clear how we should be responding, and I think that tells us we have to be flexible in our approach to the impact of globalization. But the basic dramatic revolution in technology, in organization of industry, in the increased role of communications and information technology, in the way businesses are organized, in the way service has now become an increased part of world trade, all of that, will have changes for the role of government and changes for the way wealth is created in our economy. I hope it does not do too much injustice to a very difficult and complex topic to accept the analysis that wealth will be created in a way that is much more based on knowledge than it is on exploitation of resources. This is the kind of wealth creation that Canada has enjoyed for the last 50 years. It is not going to be the way wealth is fundamentally created in the world in the next 20 years.

1130

I think one implication of this is that Canada's economic prosperity is going to hinge very much on the willingness and the opportunity for individuals and firms to invest in knowledge, to acquire new techniques, to absorb innovations from the rest of the world, as well as to generate and diffuse them ourselves within our own economy, and the incentives to do that are very much enhanced by the breadth of the market in which those firms and individuals perceive they will be able to sell the benefits of the investment and knowledge they undertake.

An individual who thinks that he is going to be confined—I will give an example that is relative to me—to eastern Ontario for the rest of his life is going to be much less disposed to making the sacrifices to invest in new skills than he would be if he felt secure in the knowledge that he could take those skills and move throughout the Canadian economic union if economic opportunities in one region change relative to those in another region. If the market for electrical engineers in eastern Ontario dries up, he can still take those skills and go off to northern British Columbia and sell them. Then the incentives to him are clearly much stronger to actually undertake the costs and the sacrifices to acquire those skills. One of the messages from me on this increased emphasis on knowledge is that mobility rights of individuals and citizens are key to the preservation and enhancement of the economic union, and I think that reinforcing those mobility rights is one dimension of constitutional renewal that we could be undertaking and

discussing at this time, even in the absence of Quebec's particular aspirations.

Another factor that I think calls for us to be undertaking constitutional renewal at this time is a fact that basically escapes a lot of public discussion, and that is that in the last 25 years, Canada has undergone quite massive decentralization. The role of the provinces in the economic affairs of our nation has increased dramatically, relative to the role of the federal government. Part of that is testimony, I think, to the flexibility of Canadian federalism. Canadian federalism has been enviable in the international scale in its ability to respond to different pressures. We have a very flexible federalism and we have all sorts of creative federalism in Canada, ways we have found to accommodate pressures in the various parts of the system, but it is also sort of an ad hoc patchwork that we have had as a result of this 25 years of decentralization.

I think there comes a time when enough ad hoc change has occurred, when you have to stop and take stock and essentially undertake constitutional renewal to ensure that the incentives, the powers and the obligations of our various governing institutions actually more closely reflect the responsibilities that they have assumed over these 25 years. So an important part of constitutional renewal is institutional reform to reflect not only change in the world economy and change that we anticipate within Canada in the next 20 years, but in fact to accommodate some of the de facto change that has occurred over the last 25 years as we have undertaken a quite massive decentralization of both revenue gathering and expenditure by the provincial governments relative to the federal government.

From this perspective, it is important to recognize that Quebec's aspirations may to a large extent be driving the timing of our constitutional discussions, but they are not the only factor driving the agenda, and we should actually be looking upon these constitutional discussions not as a crisis in which we are responding to the aspirations of one group within the Canadian federation but as an opportunity to build a Canada that will be more able to provide prosperity and freedom in the next 25 years.

With that preliminary remark, let me return then to the role of the economic union, and if you will forgive me, I will give a two-minute lecture. I do lecture at the university as part of my profession, so I will profess for two minutes here, if I may, on economic integration.

I think it can be very strongly established that the benefits of economic integration increase with the degree of integration that is undertaken, yet for a variety of reasons regions choose different levels of integration between themselves. Over the last four or five years, we in Canada have been engrossed in a debate, first of all, about anticipating the benefits from, and now in retrospect trying to gauge the benefits from, a form of economic integration with the United States. The free trade agreement is one form of economic integration, and I would essentially put it at one end of a spectrum of economic integration. It is the loosest form of economic integration that you can formalize. It allows the free trade of manufactured goods and produced services across an international boundary, subject of course to important domestic-content provisions,

but it really entails no more than that. It broadened the market for the production of goods and services but very little more than that.

There is a whole spectrum of economic integration. At the other end, the closest form of economic integration is what I would refer to as an economic unit. An economic unit expands upon the free trade agreement to include mobility of factors of production and—I think importantly from the point of view of our current discussions—guaranteed mobility of certain citizenship rights, and it is those certain citizenship rights that provide the really binding form of economic integration that I think has been reflected in an economic union.

So there is a spectrum. At one end there is the free trade agreement that involves only a very loose form of economic integration. There is a middle ground which might be thought of as a common market—the European common market was for many years sort of an intermediate form of economic integration—and then at the other extreme of the spectrum is an economic union which is the tightest form of economic integration. I think it is pretty clearly established that the economic benefits that flow from the integration increase with the degree of integration. Economic benefits are highest with an economic union and minimal with the free trade agreement.

The second half of the message, though, is that the degree of political integration that is required to sustain the economic integration also increases with the degree of economic integration. A free trade agreement involves virtually no political integration at all. An economic union, on the other hand, requires considerable political integration. Policies have to be harmonized and the governments of the various regions have to recognize their common obligation to preserve the citizenship rights that are spread throughout the economic union, so there is this tradeoff, if you like, between the economic integration and the degree of political integration that is acceptable.

The message of that, at the simplest level, is that you cannot independently choose how much economic integration you want on the one hand, and how much political integration you want on the other hand. To a very large extent the degree that you pick on one of those choices dictates how much integration you have on the other choice, and that is an element that I think has been missing to a large extent in the Quebec nationalist debate. There has not been an explicit, honest recognition of that link. It is what makes the concept of sovereignty association such a vague and ill-specified concept, because it seems to choose independently the economic association and the political sovereignty and the squaring of that circle has never been made explicit. That certainly plagues the debate, because very often participants in the debate who use that term have in mind very different choices on one or both of the sovereignty association forks, and the debate is not resolved because this link between the two is not explicitly recognized.

It is useful to think about the European experience in this regard. Basically what we have observed over the last 20 years is a growth in the degree of economic integration that is being achieved and being aspired to in Europe. It

started with essentially free trade areas and moved towards a common market. Now there is a move towards—in the aphorism “Europe 1992”—the single market for Europe, which entails a very tight form of economic integration in trying to strike down barriers within the European market in much the same way that some economists would like to see Canada try to do within the Canadian market.

1140

As that process has proceeded, the recognition of the need for political integration has surprised many of the participants in the debate. The drive for economic integration carries with it a much greater degree of required political integration than I think people who started the process 10 years ago had envisaged, so there has been through this process, as economic integration proceeds, a growth in the role and the authority of the supranational institution, the European Council.

Indeed, it is sort of enlightening to recognize that in the European context, much of the debate is conducted in terms of the explicit recognition of nation-states ceding sovereignty to the European Council. This is the term used in much of the debate in Europe. They are ceding sovereignty to the European Council in return for the prescribed economic benefits that they anticipate from 1992, so I think that link between the economic integration and political integration is very important.

Let me turn more specifically to the questions you posed in your background document and identify the two dimensions of the securing of this prosperity and freedom that I referred to that I think are important for us to bear in mind in the constitutional discussions.

First, we have to do more to enhance the common market dimension of the economic union. We have to have better mobility rights for Canadians and we have to try actively to reduce and, where possible, remove the barriers and impediments to trade that exist, primarily between provinces but not always simply between provinces. The interprovincial barriers to trade are the key ways of enhancing the common market.

The second is that we have to improve the co-ordination and harmonization of economic policies in Canada. This need for improved co-ordination is driven partly by this globalization phenomena, but it is also driven by recognizing how much more important the provinces are in economic policy terms now than they were 25 years ago and that when you have 11 governments actively involved in economic policy, the need for co-ordination, the need for harmonization, is much more pressing. This co-ordination is with regard to structural policies, the various issues that come up in manpower, training, education, all sorts of structural policies; it is also very important for stabilization policies.

As an example of that, I would argue that this province has been the odd man out or the odd person out—excuse my slippage there—with regard to the basic stance of macroeconomic policies in this country over the last four or five years. While the thrust of the Bank of Canada's monetary policy and the fiscal policies of both the federal government and most of the other provinces has been towards long-term fiscal prudence, concern about deficits, a medium-term plan to control inflation in the country, Ontario

has been basically out of step with those policies, and Ontario is so big that its being out of step has meant that we have had a fundamental working at cross-purposes of important government policies in the economy. The goals of the national government, the control of deficits and debt and disinflation have been compromised by this; the goals of the Ontario government have been compromised by this because these policies have been basically in conflict. An increased role for co-ordination and harmonization would have helped us avoid that situation.

My own perspective is that I think the Ontario government has actually been following undesirable policies, but even if you did not accept that analysis and you wanted to defend the particular policies of the Ontario government over the last four years, you would recognize that those policies have been less effective because of the lack of harmonization with the other policies being conducted in the economy. So one could imagine something like the way the G-7 countries have tried to develop processes to co-ordinate and harmonize their policies better at the international scale. Canada should be starting to think about the institutions, frameworks, procedures and traditions that try to facilitate the co-ordination and harmonization of policies among various levels of government.

I would submit to you that both of these lessons, the enhancement of the common market and the improvement of policy co-ordination and harmonization in the Canadian economic union, give rise to a fairly important role for the central government. This is not centralization or decentralization in terms of where the taxation powers reside, where the spending powers reside. It has to do with the role of a central government as a facilitator, the arbiter, of these needs to make the common market work better and to support the co-ordination and harmonization of economic policies. With that, I will invite questions.

The Acting Chair: We have a little over eight minutes for questions. We will begin with Mr Curling.

Mr Curling: Professor, I am not one to challenge your economic theory at all. I am not an economist. I am just a politician.

Mr Bisson: You say that with a great deal of pride.

Mr Curling: Very much so, and I say that as a politician because I feel quite qualified in interacting with people, hearing their desires and their aspirations. While I hear you, I hear a lot of theory that you put in place for how the economy may work and how we have to face this globalization and dealing with the marketplace, which is the world. You said something that catches my attention. You said "the ceding of sovereignty." I read that as giving up power. In this very diverse, multicultural province, there are few who have that power. Do you not see that in that reordering, that redistribution of power, understanding its people first has to take place, because when the general says, "Charge," who is in charge? The other people are not running the other way, but they are following him because they feel a part of it. How would you respond to the fact that has to be taken care of first?

Dr Purvis: The other part of the European debate that maybe I should introduce at this stage is what is called the

principle of subsidiarity. Understand, Europe is coming from a very different starting position towards the creation of what is essentially going to be a federal state. They are starting from the position of independent nation-states building supranational institutions to co-ordinate, gradually ceding sovereignty, to use that term, to that supranational institution, recognizing that some powers have to be with the supranational institution which we would call the federal government. But they started from a position where that federal government had no powers.

That ceding of sovereignty is conditioned by this principle of subsidiarity—sorry for the jargon, but it is their jargon, not mine—which says that essentially all powers should be retained at the lower level of government except those for which there is a compelling reason to have it at the federal level. In doing that, they are recognizing, I think, precisely the forces that you are identifying, the ability of smaller units of government to associate more closely and match the diversity of preferences and desires of its citizens, which is a principle that has to be recognized in that allocation of powers. So they very strictly adhere to this principle of subsidiarity, and I think that Canada would too in the allocation of powers.

We are starting from a different position where the federal government already has a lot of powers. Much of the debate talks about taking a lot of those powers away from the federal government and giving them to the provinces. I guess my ceding sovereignty line was simply meant to warn against overdoing that. If you overdo that and leave a shell as a federal government, I do not think the economic union would survive, and if the economic union does not survive the political union will not either.

Certain fundamental powers have to be at the central government level to provide a bonding of the regions. There also have to be powers at the lower levels of government to recognize the diversity of the regions. I think Canada's federalism has been remarkably flexible and effective at striking a balance over time between those two competing sets of pressures.

1150

Mr Winninger: I agree with you that moving towards economic unity is certainly a positive direction to take. At one stage during your presentation you suggested that Ontario was out of step with Ottawa and the rest of Canada. I prefer to see it as the rest of Canada being out of step with Ontario. The policies of fiscal restraint that the federal government has undertaken really have not done anything substantial to bring down the national debt. They have done nothing to assist the economy in adjusting to the ravages of free trade and the GST. People have undergone considerable privation and hardship, and jobs have haemorrhaged to the US.

In addition to eliminating the interprovincial barriers to trade which still exist, is it not more important that we adopt a more co-operative style of economic management where government and labour and the business community work more co-operatively together? We hear this mentioned again and again, but it seems to me that the style in many provinces of Canada and at the federal level is more

adversarial, whereas the communities you describe in Europe—the European economic community, some of the most competitive and prosperous countries: Germany, Austria, Sweden and also Japan, if you want to go in that direction—certainly have enhanced protection for their workers, and yet still maintain a considerable economic and competitive edge.

I wonder if you have had an opportunity to study our situation vis-à-vis these other high-producing countries.

Dr Purvis: Of course, the question opens up a whole range of issues, and I guess we could keep the committee here for the rest of the day debating them. I think the point I would like to make in response to it is that regardless of your orientation in terms of the political economy debate, I would accept your view that too much of our policies have been forged in an atmosphere of adversarial confrontation rather than co-operation and harmonization; and hence I would like to see procedures and institutions put in place that encourage co-operation and more open discussion, more mutual recognition of each other's aspirations and problems.

I pose that at the federal-provincial level. I would certainly see room for expanding that to, say, the German tripartite notion of bringing business and labour to the table on many economic issues. There is no reason why that could not be done either in parallel with or in conjunction with conferences, procedures, institutions, that try to enhance the federal-provincial dimension of it.

One would think in particular that the provincial governments would often bring to the table the views of labour in their own particular part of the country, because one of the characteristics of the Canadian economy and of this economic union that we talk about is that very often different regions of the country are undergoing quite different economic experience. The big changes in the relative prices of resources to manufactured goods, for example, cause booms to be occurring in the west while Ontario is mired in recession; or as was the case a couple of years ago, the reverse—Ontario in a boom and the west in recession.

This disparate economic experience is part of the diversity that could be reconciled through this process of better co-operation and better harmonization. It is a motherhood statement. We would like to have been doing better on this for the last 20 years. Federal-provincial relations have always been a rather contentious part of the Canadian economic dialogue.

The point I would like to leave you with is that it is absolutely fundamental at this point that we quit throwing up our hands and saying nothing can be done about this, but actually to address this as a fundamental issue, both because of the increased pressures on us from globalization and because we just have to recognize how much more important the provinces are in our economic affairs than they were when Mr Trudeau started talking to them even 20 years ago.

The Acting Chair: Thank you, Professor Purvis, for your presentation to the committee. We appreciate it very much.

GUY LAFORÊT

The Acting Chair: I would ask for Professor Laforêt to come forward, please.

J'aimerais souhaiter la bienvenue au Professeur Laforêt, qui se présente pour la première fois devant ce comité de l'Assemblée. I believe, Professor Laforêt, that you are willing to give your presentation in English. It is certainly up to you, whichever is preferable to you. I would ask you first of all to introduce yourself and say where you are from. I believe you know that you have been given a half-hour, and I hope there is some time to pose some questions.

Dr Laforêt: Merci, Monsieur le Président, de votre invitation. Indeed, I am a professor of political science at Université Laval in Quebec City. Although it is the first time that I have the opportunity to speak in front of you, I have had during this present year the opportunity to present briefs to Bélanger-Campeau, to the Spicer commission and to Beaudoin-Edwards, so in that sense there is real grey hair in terms of constitutional debates. Whether there is wisdom or not I will leave to your interpretation.

There are two preliminary remarks that I want to make. The first one would be about conveying a sense of urgency. As we now speak, there will be a referendum on sovereignty in Quebec in 440 days. Every time you are coming here, every time you are meeting here, the clock is ticking, the clock continues to tick, and we are getting closer to that debate. Some will feel that this is a threat; I think this is a perception, but I think it is a real political fact that you have to factor into your reflections.

There is a second clock which is ticking, and I think it makes the whole thing even more urgent, and it is that every single day that passes it becomes more difficult to solve the constitutional puzzle and the constitutional crisis. As I will explain later, there is something at work in Canada in the functioning of our political system, of our political culture, that makes it more difficult every day to solve the crisis. I think if I am successful in conveying this to you today the sense of urgency and the fact that as time goes by it is even more difficult to solve the issue, I will have been successful.

The second remark: Many people have influenced my thinking on these issues over the years, but one of them, and I think that in this I share that fact with your Premier, Mr Rae, is that I have been a student of Charles Taylor in political science at McGill University, and a number of ideas that will come forward in my presentation, quite frankly, I owe to him. I think he has been throughout the years one of the most important thinkers reflecting upon our dilemmas and our crises, and you would be extremely wise in looking at some of his writings over that. I will try to convey a number of his ideas in my presentation.

Preliminary remarks being set aside, there are two things that I want to do. As a Québécois I would like to foster a greater sense of understanding of what is Quebec's position. I think as Ontarians you have to have a greater understanding of what is the Quebec position—my understanding, anyway—and I will try to do that. Second, I want to convey a message about the relationship between Quebec and Ontario that will continue no matter what the solutions or the absence of solutions will be in the next couple of years.

Fostering, first of all, a greater sense of understanding. Yesterday in *Le Devoir*, Premier Bourassa, after his meeting with Premier Johnston of British Columbia, said that for him the priority right now is to try to act in view of the fact that Quebec considers that the 1982 constitutional reform is unacceptable. I think it is fundamental for everybody to understand why the Premier of Quebec and why Bélanger-Campeau believe that the Constitution Act, 1982, which many of you consider as one of the greatest gifts to Canadian politics in the 20th century, is unacceptable for Quebec.

1200

I think it is unacceptable for a number of reasons, but there are two I want to outline to you. First I want to touch upon the fact that you consider yourselves, and are, parliamentarians. I am sure you are aware of the importance of what you are doing, what it means to be a member of a provincial Parliament and to be part of the legislative power of a society. The British political philosopher, John Locke, writing in the late 17th century, called the legislative branch of government, the legislative power, more or the less the heart and soul of a society, of a political community. What you are doing, really, is in the political life-line of a society, of a political community. The legislative branch of government in a liberal democracy is of crucial importance, and I think most or all of you are quite aware of that.

In 1982, the Constitution of Canada was modified substantially without the consent of your peers in the legislative branch of Quebec's government. Your peers in Quebec saw substantive parts of their power being diminished, being taken away without their consent, without the consent of their government and without the consent of the people who had elected them. This is a fundamental factor to the current crisis that we have.

Obviously, many people are saying—the former Prime Minister of Canada, Mr Trudeau, the first of them—that it was enough to have substantial consent on the part of those who represented Quebec in the federal government, and he has a point. We live in a federal regime, in a federation, and in such a regime, where sovereignty is shared, where we have collaboration between various levels of power, undeniably legitimacy stands with the provincial representatives and with their representatives at the federal level. However, that does not mean that the representatives of the federal government can take away powers from their peers at the provincial level without their consent. Actually, the truth, I believe, in our kind of regime, is exactly the contrary. At the heart of federalism is that the provinces cannot, without the consent of the federal government and the representatives at the federal level, diminish the consent of the federal government, and the federal representatives cannot diminish provincial powers.

In the 1981-82 round, the powers of Quebec were substantially diminished on issues of crucial importance in Quebec, such as language and culture, without the consent of the members of the National Assembly, the government, and the people of Quebec. That is one of the most fundamental facts that lies behind the current crisis.

The second one, I think, goes to the heart of the reform itself of the Constitution of 1982, and that is the Charter of Rights. The Charter of Rights must be seen not only as a liberal and democratic document, but also as a nationalist document. The Charter of Rights embodies one of the major intentions of former Prime Minister Trudeau, which was to try to foster and devise and create a new national spirit in Canada that would bind Canadians from sea to sea into a new, unified political community. The charter is not only liberal, it is a nationalist document.

At the heart of the charter, one of the major aims, I would argue, is to negate the status of Quebec as a distinct society, an autonomous political community, a people or nation. That is one of the major aims of the charter. The charter is incompatible in its present form with the notion of Quebec as a distinct society, a nation, a people or an autonomous political community. This, by the way, is not just a Quebec intellectual or nationalist like myself telling you this. Academic political scientists like Peter Russell, whom you heard yesterday, Alan Cairns and most of their peers in the community of Canadian political scientists have argued in their scholarship over the years that this document is nationalist. It is centralizing, homogenizing and in spirit against the idea that Quebec is a distinct society, a nation and a people.

To prove that, let me refer to one of Mr Taylor's contributions in a book entitled *Options for a New Canada*, edited by Ron Watts and Doug Brown, published this year. I am referring to page 71, where Professor Taylor writes, "Quebec saw that the move to give the charter precedence imposed a form of liberal society that is alien and to which Quebec could never accommodate itself without surrendering its identity. In this context, the protestations by charter patriots that they were not against Quebec rang hollow," wrote one of the most pre-eminent political philosophers in Canada this year.

My point is, one, that 1982 is unacceptable because it took powers away from Quebec without its consent; and two, because in one of its major aims there was something unsympathetic and antagonistic to the most cherished perceptions of themselves by Québécois. So this is the first of the most important points I wanted to tell you today.

Let's move from that part of the analysis, interpretation of the past, to an attempt to devise what is likely ahead for Quebec, for Ontario and for Canada.

Elsewhere, Professor Taylor has written, "What we face in Canada is an absence of consensus on national identity, on national spirit, on national community. There is no such thing as a consensus on these issues in Canada," he wrote in the mid-1980s. Whether you like it or not, Quebec sees itself as a distinct society, nation, people and autonomous political community. One consequence of the failure of the Meech Lake accord, of the denial of recognition that Quebec is a distinct society, is that the Québécois want such a recognition even more right now than they did three, five or 10 years ago. They want it even more, so in a sense it is even more difficult now to solve the crisis than it was before Meech Lake was passed in 1987.

The Québécois will not accept, I believe, a reform which is not prepared to state openly, not in a preamble or

footnote, at the heart of the political system, in the body of the Constitution, the acknowledgement that Quebec is a nation, a people, an autonomous political community and a distinct society. This recognition will have to be symbolic and it will have to be substantive.

Can it be done, and what would such a reform look like? I am doubtful, as you will see in a moment, about the possibility of this being done but just to give you an indication of what would be required, let me state a number of points. I will just outline them. I will be able to answer some of your questions, if you are interested, into any of these issues.

There will have to be two charters of rights. Quebec will not accept the preponderance of a Canadian Charter of Rights as it stands right now. I think there have to be two. The notion that there is a common vision of the public good, a consensus on a notion of the common good shared by the Québécois and Canadians, will not carry through. There has to be an acceptance that there are two understandings of the common good in the Canadian liberal democracy, one that is shared by—and I insist on the expression—English-speaking Canadians, and the other that is shared, I believe, by a majority of Québécois.

I would argue that you need two charters. You need substantial devolution economically, as Professor Purvis argued a moment ago, but also, on issues such as language, culture, education and immigration, you need a recognition, I believe, at the heart of the system, that Canada is not a normal nation or nation-state and will never be. Canada has to see itself as a multinational federation or Confederation where a Canadian nation, a Québécois nation and aboriginal nations co-exist. Building what Mrs Marland, I believe, was talking about earlier this morning, a vision of unhyphenated Canadianism—I do not think there is such a thing as one Canadian nation. I doubt extremely that this will be possible considering current conditions in Quebec.

In the last instance, what would be required—and I may hurt some feelings—is nothing less than more or less changing the name of the country. To make a reform that will buy the hearts of Québécois into the system would need, I think, something like calling the country, openly to the world, Canada-Quebec. What I am telling you, the perceptions I see in Quebec and the substantial characteristics of the changes that are required are two charters of rights and substantial devolutions. Recognizing the fact that Canada is a multinational federation goes to the fact that in the last instance, as a consequence of all that, what you really need to do is to recognize openly that you have two autonomous political communities that unite in a political system. In acknowledging this, you change the name of the country and call it Canada-Quebec.

1210

That, by the way, is absolutely not incompatible with various ways of reorganizing, centralization or decentralization between the current federal government and the English-speaking provinces. This is not incompatible with recognizing the rights, privileges and extremely substantial contributions of the aboriginal peoples in Canada. But I think that no matter what, these are the kinds of changes

that will be required if, in the next few years, there is still to be a union between Canada and Quebec.

In just two or three minutes, if you allow me, I will try to explain why I am extremely doubtful about the possibility of doing that. I think those who wrote and signed the report of the Bélanger-Campeau commission were extremely wise when they talked about the current dominant political culture in Canada, when they talked about what I alluded to earlier, the importance of 1982, the importance of the political culture fostered by the institutions of 1982 and, paramount among them, the Charter of Rights.

Those who wrote and signed Bélanger-Campeau, including almost all Parti québécois members and all Liberal members including the Premier of Quebec, talked about the fact that right now at the heart of the system—in the French edition these are pages 38 and 39—is a triple spirit of equality at work in the political culture of Canada: equality of individual rights, unity of the society in which people live—and this is their first kind of equality; second, equality of cultural origins in Canada, incompatible with the notion of linguistic duality; and third, equality of provinces. These three equalities, equality of the provinces, equality of cultural origins and equality of individual rights, are the three things that are fostered by the Charter and are extremely hard to reconcile with a vision that Quebec is a distinct society, that it should have original powers different from those of, say, BC, Ontario or the other provinces. This political culture of those three equalities is becoming, every day that goes by, more entrenched in your province and in the other English-speaking provinces. I believe those who wrote Bélanger-Campeau were quite aware of the trend of these institutions and of this going on.

I think those who wrote the Spicer commission made the same point, in the English edition on page 53, when they talked about their dealings with ordinary Canadians: "For most participants outside Quebec, Quebec's continued presence and consideration cannot be bought at the price of damaging or destroying those things they value most about the country, and in particular must not be bought by sacrificing individual or provincial equality."

Mr Trudeau, in a sense, was quite successful in transforming the political identity, the political culture, of each and every one of us and even more so, outside of Quebec, of English-speaking Canadians. Now, more than 10 years ago, individual citizens across the country have more or less internalized this vision of equality: equality of individual rights, equality of cultural origins and provincial equality. It is more entrenched than 10 years ago and more incompatible with the vision of Quebec as a nation, a distinct society or an autonomous political community.

Because of all these things, there are grounds to be sceptical about the successful resolution of the current crisis between Quebec and Canada. This is why I want to move to the brief and last part of my presentation, a kind of message that somebody like myself, coming from Quebec, would like to carry across to representatives of the legislative power in our neighbouring province, Ontario.

There is no joy in seeing the agony of deep diversity and complex federalism in Canada. If you go to Montreal or Quebec City, when you look at the person on the street,

you do not see any joy in the degradation of our political system, in the fact that Canada is traversing such a remarkable, multidimensional crisis. There is no joy in the fact that we live in tremendous conditions of political uncertainty. There is, and I believe that this is also shared by many Canadians, a great sense of vulnerability that one can feel in Quebec.

You and I share life in the shadow of an empire. The most important country in the history of humankind, politically, militarily, culturally and economically, is our only neighbour, for good and for bad, in the Americas. We share that, and in our vision of Canadian culture and Canadian identity and our vision of Quebec culture and Quebec identity we share that sense of vulnerability in the neighbourhood of such an empire. No matter what, even if the Canadian political system collapses, we will remain geographical partners and also partners in sharing that sense of vulnerability in the face of the American empire.

I think that these two things and many others are a substantial basis for the redefinition of the partnership between Quebec and Ontario that will be done, I am absolutely convinced, within renewed federalism or within a totally new political system. Conceiving the form of such a new Ontario-Quebec partnership, in view of the chances of failure of the current trend, is, I would humbly suggest, a highly urgent task for leaders in both societies, and particularly for you. Thank you very much.

The Acting Chair: Thank you, Professor. Those are stirring challenges, I think, to the committee to respond to. We will begin with M. Bisson.

M. Bisson: Monsieur Laforêt, vous avez pris l'opportunité de nous parler ici en anglais, alors je vais faire la même affaire pour commencer.

You talk about something that I guess is already a fait accompli to a certain extent in regard to the charter. There needs to be a recognition that there are two charters within Canada, and when you speak of that, do you say that you profess that there be two charters within the same Constitution, being at the federal level, or are you talking about a separation, such as what we have now?

Dr Laforêt: What I am saying is that, for instance, in the case of a renewed federation, it would have to be inscribed at the heart of the Canadian federal or confederal Constitution, as it would be inscribed in the constitution of Quebec, that there are two charters of rights and that the Charter of Rights that would have weight and legal validity in Ontario would have no legal validity whatsoever on the territory of Quebec. Individual rights and collective rights, because in the current charter there are both, would be defined by federal Parliament and the provincial parliaments of the English-speaking provinces for what we currently call ROC, or rest of Canada, and Quebec would devise and constitutionally entrench its own Charter of Rights.

This can be done. I am not saying this is what I am advocating, but I am telling you that this can be done within the fabric of one single country. Canada, or what I call Canada-Quebec, could still be one country in the United Nations and have two charters.

What you are talking about is part of what I call the drive to normalcy that is animating the Canadian political system. The drive to normalcy is that we have one representation in the United Nations and we should have one Charter of Rights, one Canadian identity. What I am telling you is that two charters of rights would be in line with our tradition of recognizing deep diversity and would not be incompatible with one single political system.

1220

Mr Bisson: The crux of this thing, very quickly, is that I do not think anybody in this country would disagree with the fact that Quebec is a distinct society within the rest of Canada. Probably the same could be applied to different regions of our country as being very distinct among themselves, to the rest of what makes this country Canada as what we call it. But the real crux of the problem is, how do you get the various people in this country to sit down and to recognize that?

My thinking is that, in looking at this thing for the amount of time that we have, people, yes, recognize that Quebec is different, but they are afraid of what that difference means, and the message we often see within Ontario or any other place outside Quebec is sometimes somewhat different from what the Quebec people are saying on the streets through the representations we see in the media.

As politicians, and you as a citizen and we as citizens inside this country, how do we reconcile what that means and try to put that somehow down on paper so that we can move on and keep on with the building of this country? I profess that the biggest damage that could be done to this country is that if it comes down to the point of a referendum where Quebec decides, "I'm going my way," it will be the demise of what we call Canada, and that is not something I think anybody wants to see.

Dr Laforêt: I think, in trying to briefly answer your question, this is the hour of necessity. There is that expression that, through Bélanger-Campeau and through a referendum in the fall of 1992, Quebec is putting a knife at the throat of English-speaking Canada. Let me turn this around.

Since April 17, 1982, Quebec has had a knife at its throat, a Constitution which has legal validity in Quebec but that has not been accepted by either the government, the National Assembly, or the people of Quebec. That Constitution remains as valid now as it was almost 10 years ago and it is corroding the capacity of Quebec to act as an autonomous society. Quebec is behaving, I believe, the way it is because it feels the power of this new political culture, devised by the charter, aimed at its identity, aimed at its vision of itself as a distinct society and as a national community.

Speaking about what I consider the majority of citizens of Quebec would buy if they had a preferred choice, I think most people would tell you that they would buy what I call a federal or confederal binational restructuring in a partnership, Canada-Quebec. That would be their first choice and it would go through in a referendum.

However, if they are denied this, the new game that is being played post-Meech Lake is that cosmetics, just working on the status quo, will not do. If they are made an offer that does not recognize them as a distinct society and

an autonomous political community and nation, then they will opt for independence, with its risks. Most people are quite aware of the risks, but they are also aware of the consequences of the current deterioration of the Canadian political system and what it means for Quebec. The real new ball game being played post-Meech Lake is that you cannot have a reform that will sell in Quebec if you are not prepared to state openly, symbolically and substantially that you see Quebec as an autonomous political community, nation and distinct society. If you cannot do that, I am afraid you will not be able to sell an offer in Quebec within the next 15 months.

Mrs Y. O'Neill: I think I am hearing what you are saying. I want to begin by saying I was quite uplifted yesterday in the reports I read from the French and English media in Quebec that the meeting between the two premiers was considered at least communicatively successful, that they really did seem to hear each other. I think that is a very big step, considering the gulf that at least in public was between them, so that was uplifting to me. As you know, we are going to be speaking, hopefully, with either themselves or their representatives in the very near future.

I am very pleased you have brought us the perspective you have, because I do not think we have had somebody like yourself, with your background, before the committee. I do speak, actually, to some members of the National Assembly, and I also have quite a few contacts in the Outaouais. They are not bringing the very same message. The Outaouais is different, has different concerns, and certainly maybe the thinking is pressed by other forces. I am not saying that what you are saying is not spoken there, but it is not said in the same way. At least, I have not heard the people speaking that way.

You began by speaking about the 440 days. Actually, that rings an awful note for me, because I think 440 days was how long we had the Iranian hostage-taking. That rings very much to me. I watched that issue very long and that is not a happy number for me.

Solving the issue was the way you began—if we do not solve the issue and the clock is ticking on the solving of the issue. You certainly did bring more than a challenge to me. Although I have read it, I have not heard somebody say “Canada-Quebec.” The two-charter concept, of course, is not new.

I want to ask you what you mean by solving the issue. I guess the only reference points I have at the moment—are you talking about Allaire and that kind of solution? Are you talking about asymmetric, or are you really talking what the rest of us can understand as separation?

Dr Laforêt: I go to the heart of the matter. I think this is what one has to do in the circumstances in which we are. I am not an economic expert. I am certainly not an expert on what would be the appropriate levels of devolution regarding rationalization of the federation. I am not talking about that. I think what I can give you is to provide information concerning the political theory and the symbolism behind the current crisis and the relationship between Quebec and Canada.

On these issues, what I believe I am telling you is that Quebec has always seen itself as a distinct society, an autonomous political community. This is a constant. Meech Lake was one imperfect attempt to give some space—not all the space, but some space—for this idea in the Canadian Constitution.

The failure of Meech carries a number of consequences. One of them is that now this vision of themselves that the Québécois have and for which they wanted recognition has been denied, I would argue they want it even more than before. Psychologically, you can understand that very much in personal relationships. I think now they are prepared to take more risks than before to get that recognition.

My message is that I think they are ready, if the recognition in question is not provided squarely and openly within the next year and a half, to get it internationally. So it will have to come either way.

I am not foreclosing a Canadian solution, if you want, or a solution that would come within the next year and a half and that would more or less transform substantially out there the Canadian federation and more or less keep the political system, but what I am telling you is that if it has to happen, if Canada has to remain one single political unit with one representation in the United Nations, this has to be done. That kind of recognition of Quebec has got to be given and put at the heart of the political institutions within the next year and a half or my understanding is that the majority of Québécois are now ready to take more risks to obtain such recognition internationally. I guess that is the heart of the message I am trying to carry out.

1230

Mrs Y. O'Neill: This came before our committee last week by way of a university professor. Do you feel there is a possibility of violence to attain that?

Dr Laforêt: Look around you in the world. There are about 160 independent states. I think the experience of historical observation of how these states and how the populations involved behaved throughout the centuries is that there is not one single state that runs no risk of internal political violence. Internal political violence is always a possibility. It is always there. In some states the risks are higher. If you look at federations in the late 20th century, if you look at the Soviet federation and the Yugoslavia federation, then undeniably the risks there are much higher than they are in a federation such as Canada.

If you will allow me to say something else, generally speaking, for the extreme majority of citizens, there is no such thing as hatred between Québécois and English-speaking Canadians. The generation of people to which I belong has, on the whole, much better personal experiences with Canada, with English-speaking Canadians, than generations before. Our generation did not experience the kind of alienation, for instance, that the *parti pris* generation experienced in the Montreal of the late 1950s and early 1960s, which was more or less, outside, an English-speaking city and the extreme majority was French. There have been a number of transformations of political life in Canada which makes it so that there is no such thing as the

kind of deeply felt personal alienation that one could sense, say, 25 or 30 years ago.

To give you one example, I taught for two years at the University of Calgary and some of my best experiences are with my colleagues in western Canada. I would argue that there is no such thing—and this is unscientific—as hatred. However, that being said, this does not mean things could not turn bad and sour. They could. It is because things can turn sour, even in a rather civilized country such as Canada, that lines of communication must, at all costs, remain open and that people must try to consider all plausible and rational alternatives.

Mrs Y. O'Neill: One final short one: Do you feel that symbolism is really significant in this round?

Dr Laforêt: I think it is of paramount significance that a new deal that would try to solve only the division of powers between the federal and the provincial governments, that would try to devolve this and that over there and to give two or three administrative arrangements will be, in the long run, largely unsuccessful. The keys to solving the current crisis are both symbolic and substantive.

The Acting Chair: I am aware that we are over time at this point. I am also aware that Professor Laforêt has come all the way from Quebec City to be with us, so I am just wondering. There has been no question from the Conservative party. Is that fine, Mr Harnick? Then, Mr Winner, you have a brief question?

Mr Winner: Yes, I will be very brief. Professor Laforêt, I certainly found your presentation very captivating indeed. In fact, to my recollection, it is the first Quebec perspective that has been presented here, other than perhaps the delegation of Julius Grey at Cornwall, which presented quite a different point of view.

I have always been sympathetic towards Quebec's aspirations towards language and cultural sovereignty. At the same time, given the climate, I have developed a very strong concern about how the native issue in Quebec will be resolved. I say that because at the same time Quebec is moving towards devolution of powers and greater sovereignty, it seems there is also a collateral movement afoot to somehow curtail the rights of our first nations. When I hear Premier Bourassa say that the first nations will not stop seven million Quebecers from getting what they want—ie, more hydroelectric power to either utilize or sell—it worries me because I see a fundamental contradiction. Quebec is asking for more sovereignty but at the same time it seems to have difficulty acknowledging the sovereignty of our first nations, which certainly laid claim to this land far before the French and English. Perhaps you can enlighten me.

Dr Laforêt: Yes, I will try. First of all, I think you are wrong. This is not the first Quebec viewpoint you have heard. I say this half-jokingly but with some serious motives. You had a very legitimate, very refreshing and, for me, very rejoicing Quebec viewpoint this morning coming from the Italian, Jewish and Greek representatives of these multicultural communities. Although they and I are not in full agreement on all points, it would be impossible for me to say these were not legitimate spokespersons of substantive

parts of Quebec making a presentation. This being said, let me move to the native question.

I have travelled in all of the Canadian provinces. I have been in Kenora, in Calgary, in Winnipeg and in most parts of these towns on evenings such as Friday nights and Saturday nights. I have been to the north of your province and to the northwest as well. I say very bluntly, as a Québécois, that I have as well my concerns with regard to the ability of the Canadian political system to take care of the alienation of the native populations and to address the very important grievances they have. So the first part, in a sense, of my response is a negative one, or one that sidesteps the issue. I am telling you that people who should be ashamed of the way they have and do treat the aboriginal peoples are present in all parts of Canada. Quebec is no different—no better but no worse. Let me insist on the “no worse.”

If you take care of the facts, and you look at the percentage of people who are in the jails of Canadian provinces, the province where the percentage of natives is at the lowest is Quebec. If you look at economic indicators, you will see that the degree of deprivation, of marginalization, of the natives is less important in Quebec than in any other province where there are comparable populations. Quebec is also the only province—maybe Ontario has just done it and I know there is some movement on the Ontario front, but the second Lévesque government recognized openly in the laws of Quebec that these were nations. We recognized them as nations. The Canadian Constitution does not. To my recollection, no provincial government recognizes them as nations. Quebec is the only one that recognizes them as nations. So I think that when you look at facts, Quebec, on the whole, should be ashamed of a number of things but not as much as what you intended to carry across.

On the issue of hydro power, and I will conclude with this one, this is undeniably an extremely complex one. I am not going to try to defend all the political positions and the viewpoints of either the Premier or the government of Quebec. But I am going to say this: The native populations of northern Quebec, the Cree and the Inuit in particular, are desperately trying to find a way to reconcile tradition and modernity. It is not easy and it will not be easy. Trying to forcefully buy them off with \$250 million in order to have a hydroelectric project will not work. I think those who advise the Premier of Quebec and his ministers, when they suggest just utilitarian solutions, when they try to bulldoze the Cree and the Inuit in northern Quebec, are making tremendous mistakes.

On the other hand, I also know, and the native leaders are aware of this, that natives play a very important strategic role in the current constitutional crisis. They are quite aware of the sense of guilt and the way in which it can be used by those who want to stall the new deal between Quebec and Canada. I think this strategic utilization of the native issue by those who want to prevent a deal with Quebec must be named for what it is—a political plot. I think the natives are aware of that. They are no fools and they are quite aware that some people are using them from the Quebec side, trying to hurt them from the Quebec side, but it is the same thing on the Canadian side. It is realist politics that are being played out there and I think the natives are aware of that. I will stop there.

Mr Winner: Just so I am not entirely on a negative note, I do acknowledge that the Quebec Charter of Rights is highly regarded and has many protections that our federal Charter of Rights lacks. I hope there will be some protection for individual and collective rights in that charter if Quebec does devolve further than it has to date.

The Acting Chair: Thank you for coming before the committee. Your challenging remarks are going to cause a

great deal of debate, I am sure, as we look at the material you have put before us. Thank you for coming so far to be before us this day.

The subcommittee is now going to go and meet in committee room 1, where we will have a lunch meeting. The committee will adjourn until 2 o'clock this afternoon.

The committee recessed at 1241.

AFTERNOON SITTING

The committee resumed at 1413.

The Acting Chair: I would like to call the committee to order. First on the agenda we have the Canadian Council on Social Development. I would ask for the deputants to come forward and sit at the table. I cannot say how happy I am as Chair to have the Canadian Council on Social Development before us. I have spent a number of years working in conjunction with many of the members of that organization and it is a great privilege to have them here today. I wonder if you could please give us your names and tell us a bit about the organization you come from.

CANADIAN COUNCIL
ON SOCIAL DEVELOPMENT

Mr Johnston: I will certainly do that. Thank you to the committee members, for the invitation to be here today. My name is Patrick Johnston. I am executive director of the Canadian Council on Social Development. With me today is Dick Weiler, a policy associate with the council. Dick has done much of our work in the social justice area and has been the lead person on our social rights strategy, about which he will speak a little later.

We have not brought with us a formal submission at this point, although we do have and will table with the clerk what we are calling notes for our presentation this afternoon, the reason being primarily that I assumed the position of executive director only on August 1 and I have been out of Ottawa on the road for about the last five days, so I am still getting up to speed a bit on the council, and this dossier in particular. That is one of the reasons.

The other reason is that we are also in the process, as I think are a lot of organizations, of developing our position with respect to some of the constitutional issues, and quite frankly we are waiting to see in particular what is in the federal government's document, because we really believe that will give us something specific and concrete. We are keeping a number of issues in front of us. We are looking at the development of a number of issues, but we have not yet developed a specific position, which again is part of the reason we have not submitted a formal presentation today. We have in the past tabled with you, though, some of the information we have developed on social rights strategy.

Just briefly, the Canadian Council on Social Development was founded in 1920. It is one of the oldest Canadian voluntary organizations. It was founded by Charlotte Whitton, actually, before she went on to involvement in municipal politics. It was started as the Canadian Council on Child Welfare. Over the course of the last 70 some years, it has expanded its focus to provide an independent, non-governmental focus, and critique to some extent, on a whole range of social policy issues, primarily issues that fall within the jurisdiction of the federal government. In addition to child welfare, we now look at a range of issues which includes income security, child care, employment policy, some law and social development issues, housing and on and on.

It is a non-profit organization based in Ottawa. It consists of a large board of governors and volunteers from across the country who provide us with input from a range of groups and sectors they are involved with. We also have an organization membership of close to 2,000 now, which consists of individuals and organizations, mostly social service and social policy organizations across the country that use us to some extent to try to get some understanding of what is going on in the federal arena that may impact on the work they are doing at a grass-roots level. That is a bit about the council.

More specifically in terms of the issue we would like to speak to today, the invitation asked us in particular to talk about social and economic rights, and we will do that, but we want to broaden our focus. In terms of the work it has done, the council has had an ongoing involvement in constitutional issues. In fact, I think as far back as 1941 we made a submission to the Rowell-Sirois commission, the Royal Commission on Dominion-Provincial Relations at the time, and since then we have kept abreast of a range of constitutional issues, because of course issues in the Constitution and surrounding the constitutional debate are not simply dry, arcane discussions that do not have any impact on the lives of Canadians. They have a very real impact on the lives of Canadians. They have a very real impact, perhaps even more so, on the lives of vulnerable Canadians, which is why we have always tried to keep abreast of constitutional issues.

In 1980 we made a submission to the special joint committee at the time, and we were one of the only organizations, if not the only organization at that time, 11 years ago, that was talking about social and economic rights and using that opportunity, the repatriation of the Constitution, to think about the possibility, the merits of entrenching social and economic rights in the Constitution. There was not nearly as much interest in that possibility in 1980 as there is today, so we are pleased at the advance, although obviously unhappy it has taken so long.

More recently, however, the council has developed what we call a social rights strategy and I would like to ask Dick Weiler now if he could speak briefly about the social rights strategy.

Mr Weiler: As Patrick has indicated, we have, as an organization, a long-term commitment in the area of social and economic rights, calling on the United Nations law that we believe we are somewhat committed to, through history, in many areas of social and economic rights. We have tried to fold that into our thinking and our policymaking activity over the course of the years.

After the charter and the reality of the litigation process that took place in Canada, and some other experiences, the council decided a few years ago that we should embark on a long-term social rights strategy. That strategy essentially is composed of a charter of rights which we have taken directly from the international bill and reworded and fixed a bit. It is a generic statement dealing with standard of living, social security, health, education and employment.

It is a very simple document. We took that and developed this position. We also argued that we should start looking at particular social policy issues, ie, child poverty, and draw on international law in that context for the purpose of enhancing the debate and the understanding, if you will, of those particular policy issues.

What we were trying to do and what we continue to try to do is encourage our voluntary sector colleagues to use these perspectives as new windows on the policymaking process. We have conveyed this interest to many of the national and regional and community organizations. We are hoping not only to go ahead with the charter, but to have these produced in poster form to do a number of things: to teach people where and how international law comes from, and what it means, for example, to think of progressivity, which is not necessarily something we determine in court but something that gives one a sense of direction and is very much at the heart of international law, as many of us understand the international law and our commitments therein.

1420

The reasons for our embarking on this strategy were numerous. A few perhaps would be helpful here.

We were concerned that the policymaking process, at least at the national level, was getting very testy. While the courts were dealing with certain cases, governments were tending to pull back and draw back on social commitments that we believed had been committed to by the country and by provincial governments through many of the international statements that many of you know about. We were concerned about that.

We were concerned about the fact that the voluntary sector was increasingly being almost scapegoated at the national level for raising problems and raising concerns of poverty and so on, and we thought that by opening up something like a charter, we were in effect being encouraging all the players in the country, private and public sectors, to recognize that we had made such commitments to a reasonable standard of living, to housing and so on, and thereby change the dynamic in the environment and in policymaking over the course of this decade. That was another reason.

We were concerned because we noted that in the United Nations system, in monitoring countries, states that have agreed to certain international laws, being monitored by the voluntary sector was an increasing trend, and therefore we felt that as a Canadian organization in the voluntary sector, we should encourage more and more of that form of participation. As many of you know, the UN system is beginning, for example, to question the very way in which we account for our adherence to such matters as an adequate standard of living.

There has been some questioning of our income security programs. Recently, when the UN committee has looked at the level of poverty and the level of income security, that kind of questioning has gone on. We felt that as a voluntary organization we should become more actively involved in that.

Finally, there is the European experience, wherein you have a social-rights-driven agenda, as they move towards the harmonization of their economic policies, hoping, as I understand it, to achieve as high a quality of living as they can.

This seemed to be a process that was very foreign to what we are experiencing in Canada, some of us perhaps feeling that our social agenda has been delayed or stopped or slowed down, given the reality of the follow-up on the subsidy notions and such matters under the free trade agreement. So we were of the view that something that would bring a consciousness of social rights to the policymaking process in Canada would be helpful.

I close by mentioning that when we developed this—this was a couple of years back—we did not see this as a position paper, a charter that we were suggesting be entrenched in the new Constitution. At that time, this was not being discussed, so we saw it as a non-litigious document, something that would just enhance the nature of the argument and support for arguments in the area of social reform. It is for that reason, as Patrick has indicated, that we are now revisiting this whole process as we look at the constitutional reform experience.

Mr Johnston: I know your time is limited this afternoon, so we want to keep our comments fairly brief and leave time for questioning. In a sense I suppose I am going to wrap up by leaving you with two or three main messages. This will expand a bit on what we call our notes, and again we will table them with the clerk, wherein we follow the lead of your interim report and we pose a number of questions, because we do believe it is important that we are all comfortable with the answers to a good number of those questions before we proceed too quickly. Let me just leave you with two or three main points guiding the continuing work that the Canadian Council on Social Development will be doing.

The first is that with regard to those groups like ours, this body or any others that have an interest in social and economic rights, we certainly are going to and we would urge others to continue to give definition to the concept of social and economic rights, but they must be social and economic rights that are meaningful and have effect. It may very well be that the council will decide and that this committee may recommend the entrenchment in the Constitution of some statement of social and economic rights or a social charter. We do not know, and this may be the time to do that, but the point we would like to leave with you is that we have to be careful we do not become lulled into feeling that any statement of social and economic rights will be a panacea.

There is still a range of other very complex, difficult, thorny issues that need to be addressed that will affect social policy and social programs and will affect the beneficiaries of those programs. We have to be careful that we do not believe that simply by a statement about social and economic rights, all is well necessarily.

Some tough questions have to be answered. For example, are we at a point in our evolution where we can define, where we can actually measure and enforce something like the right to adequate income and the right to employment? This is a developmental stage and we have to be careful we are not simply endorsing and embracing what ultimately may become nothing more than a hollow principle.

Second, another important question I think we, and you certainly as legislators, have to answer is, to what extent

are we, or you, comfortable with the judiciary deciding what constitutes a social and economic right? To what extent are you, as legislators, comfortable with turning over that responsibility to a group of non-elected officials? Those are two of a number of very difficult questions we still need to answer, especially those of us who are advocating the development of social and economic rights.

As some of you may know, I was senior policy adviser to the Social Assistance Review Committee, SARC, and in the course of our work we tried to gather whatever statements of principles may have existed about social assistance programs and income security programs. What we found to our surprise was that there were a number of very good, eloquent statements of principles about the right to an adequate standard of living and decency, but the statement of a principle did not necessarily mean that principle was achieved in reality. That is the one caution. As an organization supportive of social and economic rights, we have to be careful we not embrace a concept that has no meaning other than nice words on paper.

The second point I leave you with is that we also have to keep sight of the fact that there is a whole host of other pieces to this puzzle in addition to social and economic rights. The issue in the debate that perhaps may be the most difficult for our organization and a number of others revolves around the whole issue of what sometimes is called "disentanglement" or "restructuring," but those are all buzzwords for decentralization from the federal to provincial governments.

It is almost a bit trendy now to support the idea of decentralization. I think, though, we should be very careful. I happened to sit down a week or two ago with one of the Group of 22—you may recall they submitted a report, a group of eminent Canadians—who really did talk about wholesale decentralization. I probed this person in particular in terms of some of their thinking behind their call for a fairly wholesale decentralization for health care, social services and income security programs from the federal to the provincial governments. I frankly was quite worried that I did not get the sense from this person that they had done a whole lot of very serious thinking about how, in practice, this was going to work. What theoretically may have looked nice on paper, I was not convinced they had thought through in terms of what the practical implications would be.

It is almost trendy to criticize the involvement of the federal government, but I think we must be very careful we do not throw the baby out with the bathwater. There may very well be opportunities. There have been in our history examples where the role of the federal government has been a very positive one. There are certainly examples where it has been a negative one, but let's make sure we distinguish and do not, to repeat myself, throw the baby out with the bathwater.

Another issue that is fundamentally important concerns fiscal arrangements, the agreements between the federal and provincial governments about how the money is spent and how the money is raised. Ultimately it may be that decisions made about the revenue generation capacity of one level of government relative to another will have far

more effect, or as much effect, on the outcome, on the impact on the social infrastructure, on social services and social programs and health care programs, than any change to the Constitution.

We are especially concerned right now because this is a very complex issue that many Canadians and Ontarians do not know much about, but it is fundamentally important. We understand there are discussions between the federal and provincial ministers of finance and treasurers going on, and have been for some time, behind closed doors. There is very little access for the public to those discussions to have any sense of what it is that is being proposed. I guess I would just ask you, or hope this committee might ask, if you know where your Treasurer is and what your Treasurer is up to and what he is talking about with his fellow treasurers.

1430

Finally, we think, too, that we should not ignore the possibility of some other changes, revisions, to constitutional provisions outside the charter. I was struck in particular by a submission I believe you have heard already from the Committee of Persons with Disabilities on the Constitution, who made a proposal for an addition to section 36 of the Constitution with respect to equalization. It would in effect, as I read their submission, try and give meaning and effect to that section of the Constitution that really does say some good things about the commitment of the Parliament and legislatures of Canada to providing essential public services, and for the Parliament of Canada to ensure the provinces have access to revenue that would provide for a reasonably comparable level of public services at a reasonably comparable level of taxation.

There is much in there that perhaps we can use. I am not a lawyer, but that issue is generally considered not to be justiciable or to be enforceable in law, but that is not to say we cannot try and give it that force or impact.

I would like to close now by leaving you with basically three or four conclusions. First off is that the council will certainly, and we encourage others to, continue to promote discussion about social and economic rights. There is much merit in the international agreements to which Canada is a signatory, which define a range of social and economic rights, but that the task is not simply to endorse or support them. The task is to give them meaning, to give them effect so they can be enforceable, so that they will be meaningful and will have effect.

The second thing is that we should not neglect some of the other pieces of the constitutional issue: decentralization and the fiscal arrangements, which in effect is a kind of decentralization. A number of the other issues have to be addressed as well as the issue of social and economic rights.

Third, we will certainly be wary, and we encourage other people, especially groups that are supportive of social and economic rights, to be wary of any proposal that may come from the federal government or any other source that essentially involves a tradeoff. We will be wary of any proposal that promotes or talks about decentralization of health care, social services or income security in return for entrenching something called the social charter or social

and economic rights, unless we are convinced that the statement, the definition, of rights has meaning and effect.

Finally, we will certainly, and encourage this committee and others to, look at any proposals that come forth and support them if they will really mean an improvement in the range of human services, in social and health care services, and in the delivery and the level of those services available for the people for whom they are intended. At the very least, we do not want the status quo or at least the ultimate resolution of these issues to be any worse than the situation is at present.

The Acting Chair: Thank you for your very fine presentation. We have three questioners and I believe we have about 10 minutes.

Mr Harnick: We have had a number of witnesses now who have talked about a social charter. One of the elements of making a social charter meaningful appears to be the ability to enforce it. The consensus seems to be, and I think quite rightly, that it is not something that should find its way into the courts, that social policy is not a matter for courts to determine. We have been given a couple of models of enforcement that are loose mechanisms of enforcement, models that would essentially embarrass a government into doing what should be done or what is recommended, or it is not going to get elected next time. Have you in the course of your work developed any models, or do you see taking existing political institutions and modifying them as your mechanism of enforcement of the social charter?

Mr Johnston: With many of our colleagues—at this point some 43 national volunteer organizations—we have explored the whole question of the governmental institutions or non-government institutions dealing with this very matter. The general experience to date has been that if these proposals were developed through the Senate, reformed council of regions or whatever mechanism we know of, that would be fine. I think there is a general sense government should have some role in that area with respect to the national concerns. But there is also strong support for an idea—and it is not formulated in final terms—whereby the voluntary organizations would perhaps come together in a way that would allow them to take collective responsibility for not just the watchdog role, which is an important one, but also the general public educational role.

The feeling is that this responsibility should not be solely in the hands of government or the judiciary, but that the voluntary sector, of which we are part, should be much more actively involved in explaining what it is we are committed to and how well we are doing, whether it be poverty rates and how well we are doing with income security or whatever, that we all do bits and pieces of that as part of our traditional mandate.

There is a sense that we could collectively do a much better job in that field, and thereby do something many of us feel is lacking in this whole process, and that is empowerment—a word some of us use too often—the public in this process so there would be an ability for the public to watch how well we are doing, say, with respect to dealing

with child poverty, a notion that many national organizations, as you know, have taken up as a cause and are arguing, “We’re going to get rid of child poverty by the year 2000.”

The follow-up to that is, how well will we do in making sure the public know how well we are doing as we move on? It is that kind of example that illustrates a more fundamental commitment that I think is developing among many of our colleagues. We hope to play a facilitator role in encouraging continued discussion in that regard to see what type of collaborative arrangements might be developed in a non-government context.

Mr Harnick: In the course of your study, have you looked at any jurisdictions that have any social charter with an enforcement model attached to it?

Mr Johnston: Again, I am fairly new to this dossier and some I am still learning as I go, but I have a sense that in many cases Canada would be in the vanguard of advancing and developing the whole notion of a social charter of social and economic rights. There has been a lot of discussion in Europe, as you know, about a European social charter, but it is my understanding that still is at a very initial stage of development. One of the issues they are debating there is the extent to which their definition, their charter, is enforceable.

We are starting to see the emergence in international law in isolated cases, of some examples where the UN resolution on social, economic and cultural rights has started to be interpreted in individual countries and used as the basis for a decision by the judiciary in those countries, but it is being done on a somewhat ad hoc basis in individual countries. I have had some discussions with two law professors at the University of Toronto who may have appeared already before the committee, Craig Scott and Patrick Macklen, who have done some varied work on that issue and are more cognizant, certainly, than I am. So there is some, but as I say I think we would be in the vanguard.

1440

Mrs Y. O'Neill: As usual, Patrick, you have asked more than you have answered. I think that is part of your style.

Mr Johnston: That is right.

Mrs Y. O'Neill: Good. I just want to pose one question to you, really. You did name guaranteed income, guaranteed employment, and then you mentioned also child poverty. I see the challenges in implementation, enforcement, whatever you want to call it. I only have one small experience with guaranteed employment and that was when I visited East Germany. The quality of life in some of those jobs was much less than desirable. Of course, there are a whole lot of repercussions to this all right now, even to the point of mental health in the new Germany.

I wonder if you could expand on the list of things you feel would need to be included in a charter.

Mr Johnston: I think as a council—I will ask maybe Dick to pick up on this as well—we have tended to use as our guide the UN and international statements and definitions, and certainly the UN covenant on social, economic and cultural rights that details a number of what we would classify as social and economic as opposed to civil and political rights.

Frankly, I think that in an exercise we as a country or as a province would have to go through, we would have to look at the extent to which we would want to start—if we felt the route to go was to move in the direction of incorporating a statement in the Constitution, whether it is in a preamble or in the text, about social and economic rights, we would have to try to make some judgements about how feasible it would be to try and encompass and incorporate all the defined social and economic rights as they are articulated in the international documents, or whether we might decide that it is better to try to identify two or three specific social and economic rights and incorporate them and build on them. I guess the question, and it is a strategic question is, is it better to try for half a loaf than the whole loaf if you think the alternative might be no loaf at all? Maybe Dick can speak a bit more about some of the specific statements of rights.

Mr Weiler: Out of the international bills, we drew statements—we have reorganized them a bit—that we felt provided, if you will, a generic framework of social rights as we understand them in the country, dealing with the statement on standard of living, which has been identified; social security, which is defined in a fairly generalized way in the international world; health services; education; and employment—this is employment with respect to the right to work and reasonable conditions of work, not guaranteed employment quite the way East Germany has dealt with that right, as I understand it. Then couch that with the range of human rights protections that are, again, provided for in the international bill.

That is the generic framework we pulled out. There are many areas for very specific interests, be they child care or whatever, that are reflected in other pieces of international law, but as Patrick has said, we felt that even in a non-litigious environment, it is important to get the framework out and then build on it.

A challenge we have been looking at is the reality that if you were to entrench either a few or a half or the full loaf of bread into the Constitution, you run into a bit of a question and a concern. We at the council, as some of you perhaps know, have run the court challenges program through its first five years, and it went very well. One of the realities that occurs, though, is that if you look at the social priorities in a country against the kinds of issues that you can bring before the court, if the court becomes the body that determines how these rights are to be played out, you can run into a situation where there is some inconsistency between what one might select to be the social priorities of the time and those that are getting attention through the courts, not just because of the way the legal process works. That is just one more area where we have to think through carefully what it would be we would start with.

Mrs Y. O'Neill: Have you paid attention to that in your paper?

Mr Weiler: There is a mention of it, but we will be developing that in much more considerable detail as we move along.

The Acting Chair: Mr Bisson, we are actually into overtime, so if you could be brief, I would appreciate it.

Mr Bisson: That could be difficult. It is a long answer, but I will make it as short a question as possible. When you talk about the question of protection of rights, you sort of reflected as to, "Are we better off to try to protect those rights by utilizing the courts through something like the charter, which is the case now, or would we be better off the way it was before with regard to legislators, who at one point are answerable to the people back home, putting forward that agenda?"

There are all kinds of examples we could draw on by which a charter was utilized to actually take away rights from individuals. We look at the recent court decision with regard to the advertising of cigarettes, the decision that was done in regard to election finances, the regulations. Just give some thought to that and share it with me if you can, because it is something I am trying to come to terms with as a member of this committee. What kind of mechanisms are possible to try to strike a balance between that? There is a very strong argument why you need to have a charter, yet it does infringe on the rights of individuals in many cases, if people have the money to challenge it.

Mr Johnston: You have asked a short question that begs a very long and detailed answer, but I will try to respond briefly.

We would not want to suggest that the experience with the Canadian Charter of Rights has been a negative one by any means. We believe there have been many positive outcomes to the charter, but I think it is fair to say that there have been some not-so-positive outcomes to the charter as well.

Frankly, I am speaking in a sense personally here. I believe that legislators, in conjunction with the public, should go as far as they can to define and articulate what a social or an economic or any right that might be entrenched in the Constitution is, so that there is as little room as possible for the judiciary to interpret what that means. In theory, that makes a lot of sense. In practice, I know it is much more difficult. I think that if legislators were simply to endorse a very general statement talking about social and economic rights that gave no direction at all to the judiciary, it would be almost an abdication of responsibility that could, depending on who was sitting on the bench at any point in time, have very positive results, or could have disastrous results. In that case it might almost be better not to talk about the further entrenchment of rights in the Constitution. Again, that is a personal position, but I think it is one that a number of other people are struggling with as well.

Mr Weiler: I support that. I would say that would be the case of many who have been very much involved with the charter, as I am sure you are aware through the litigation experience of the last number of years, and who are still very committed to that process.

But now when we take the full range of social and economic rights, much of the social glue of our society would be dealt with in a manner similar to what we have gone through with the elements of the existing charter. I think a lot of our colleagues are concerned about the need to have much more parity, as you are indicating; it is difficult to have that. The courts do find ways to use discretion

and find new ways of interpreting the law. That is reality, and it is sometimes very good. As you probably know, some people are now trying, through section 7, to find a way of recognizing the security of the person, that in fact that should in part relate to the economic rights of an individual. Some would find that a very positive move. But the creative use of the court can be very unpredictable.

The Acting Chair: Mr Weiler, Mr Johnston, I thank you very much for coming before the committee. I also might take this opportunity on behalf of the committee to congratulate you, Mr Johnston, on taking over the role as executive director. I look forward to hearing more from the CCSD in the future.

1450

ALLIANCE FOR THE PRESERVATION OF ENGLISH IN CANADA

The Acting Chair: I would ask the Alliance for the Preservation of English in Canada to please come forward. Good afternoon, gentlemen. On behalf of the committee, I want to thank you for coming to Queen's Park to make your presentation today. I would ask you before we begin to give an introduction and say who you are representing.

Mr Leitch: My name is Mr Ron Leitch. I am the national president of the Alliance for the Preservation of English in Canada. With me today is Mr Bill Bolt, who is the national vice-president of the organization.

I would like first of all to thank you for the opportunity of appearing before the committee today and making a presentation on these constitutional matters. You have asked us in our presentation to stress the language issue, and this we have done. But there are also some very fundamental issues in connection with the democratic process in consideration of the building of Canada as a nation on which we feel compelled to comment.

The Acting Chair: Could I ask, Mr Leitch, if you have a copy of your address?

Mr Leitch: I have some copies here. I am not reading from it because of time constraints. I am trying to summarize as I go along, but what I am saying is in my brief, which is available to the members.

The Acting Chair: Thank you for that. You know, of course, that you will be given half an hour. We hope you will leave some time in that period so that we may ask questions.

Mr Leitch: My instructions were 45 minutes, of which some would be presentation and some would be questions. That is what it says in my invitation to appear.

The Acting Chair: Does it? Okay. Please proceed.

Mr Leitch: Perhaps I might just as briefly as I can give you a little background on this organization. It was formed in Halifax, Nova Scotia, in 1977 under the Societies Act of that province and subsequently got a letters patent of incorporation from the federal government in 1987. The organization has been in continuous operation since that time. In September of this year we will be completing 14 years of service to the English-speaking people of this country. In all that time, APEC has never asked for or received a government grant of any description. This

organization has been sustained in all that period of time by the donations of its members.

The membership now is around 42,000, from every province of Canada and the territories. It is made up of people from practically every ethnic background in this country. Many of our members are multilingual—certainly many of them are bilingual—and the membership comes from practically all walks of life.

The organization was formed with one issue in mind, and that was official bilingualism. We are opposed to government grants, to governments creating an artificial need for the use of the French language. We are opposed to enforced bilingualism. We are opposed to the discrimination that flows from the implementation of those government policies, which we find not only discriminatory but divisive and destructive.

In Canada, where we have some 50 or more ethnic groups, we are really a multicultural society. As such, language for government is not a matter of culture; it is a matter of communication. The government must speak in one language to all people. When we use the words "official languages," we mean the language of government and its institutions.

APEC has always supported the right of every individual in this country to the language of his or her choice in matters of business, social, fraternal and religious activities. Governments interfere at their peril with the private and personal language rights of the individual. This is why we have taken a very strong stand against Bill 101 and Bill 178 of the province of Quebec, because they interfere with the rights of individuals to choice of language in their private lives.

APEC is not a special-interest group. Special-interest groups are "gimme" groups, "Give me money, give me recognition, give me special status" or give me anything else that one may think of. APEC members have never, ever asked for anything for themselves. Members are individuals who are concerned citizens, whose main interest is people, democracy and country. We love our country and we want it to exist as a country from coast to coast and sea to sea. We want to enjoy the democratic freedoms that history and tradition have given to us. Canada is rich and noble in its history and traditions. We have many national institutions, of which parliamentary democracy and the jury system are just two, and although they have their British origins, they have a distinctive Canadian flavour.

An attempt has developed over the last few decades to deny our historical roots and traditions. Politicians, I might say, have led the parade of those who would deny Canada's roots. They appear to act at times as if there was no past on which to build, no history, no tradition; everything begins here, today.

APEC is concerned about democracy, because sometimes we feel that politicians give the impression that democracy is a devolution and not an evolution. It devolves on the people from the top. True democracy can be summed up in the words, "We, the people." It is an evolution from the grass roots up to the government. True democracy can only come when we have effective control of government by the people.

APEC is concerned about people, because people make up the nation. The basic building blocks of nations are individuals, not groups. Canada grew and developed as a nation as a result of individual efforts. To attain national unity, there must be a harmonious relationship between individuals making up the nation. To develop this harmonious relationship—

Mrs Marland: Excuse me, I am sorry to interrupt you, Mr Leitch, but it would be helpful for me—I notice you are reading.

Mr Leitch: No, I am not really.

Mrs Marland: Is it possible to have your brief? It would be helpful to me.

Mr Leitch: I thought perhaps the clerk would have distributed it.

Mrs Marland: I have it. Thank you. You are making some very profound statements and it would be easier for me to read it.

The Vice-Chair: At this point the clerk will distribute copies of the brief.

Mrs Marland: Thank you. I apologize for interrupting.

The Vice-Chair: I have just been advised by the clerk that there are not enough of them, so he will make some copies and bring them in to the committee. You can carry on with your presentation.

Mr Leitch: To develop this harmonious relationship, the Constitution must treat all individuals equally. There must be an equality of status and rights for individuals. It is individuals, not groups, to whom the Constitution must speak.

What is a constitution? When one hears such statements as "distinct society," "special status," "women's rights," "aboriginal rights" being necessary to constitutional change, it is quite obvious that little thought has been given to the nature of the document itself.

The Oxford dictionary speaks of it as the fundamental principles on which people consent to be governed. It will therefore contain the framework to which all laws must conform and to which all policies of government must adhere.

One of the first principles of a constitution is that it is a people's document. As a people's document, it is the people who must decide what its content will be.

A second fundamental principle is the equality of status and rights for all people, and special status for none. When we talk about people in this sense, we are talking about individuals, not the collectivity of groups. As a people document, no person would consent to a Constitution which makes him a second-class citizen. Special status for any person or group necessarily creates second-class citizens.

1500

The year 1982 was a watershed for fundamental political change in Canada. From 1867 up to 1982, the people of Canada enjoyed a personal freedom second to none in the world. Parliament was always supreme, but subject to the elected representatives' control, they in turn being subject to the control of the people. The role of the Supreme Court of Canada was one of interpreting laws which were passed. If we did not like what the court said, we as people had the right to press Parliament for remedial legislation.

All this changed in 1982. The personal freedom of the individual was restricted to those freedoms set out in the charter, and even then subject to the limitations that governments may impose. The Supreme Court of Canada reigns supreme over Parliament. Parliament no longer has the right to enact remedial legislation which is in the best interests of the individual. You only need to look at the decision with respect to tobacco advertising to understand what I am trying to say there.

If we look carefully at Canada's constitutional problems, many of them stem from the passing of the Constitution Act in 1982. It was legally enacted. It is binding in all provinces, including Quebec. Many people think our constitutional problems were created because Quebec was left out, but that is not true. It constitutes a political red herring which can be characterized as a lie. It is true that this kind of thinking led to the Meech Lake accord and to the humiliation the Canadian people suffered at the hands of their politicians when it failed.

Canada's constitutional problems occurred because there was no consultation with the people. Fundamental change was made in our constitutional direction without a mandate from the people.

Are we a democracy or are we not? Is it sufficient for a political party to pay lipservice to the words "democratic process"? For years now, the democratic process has ended at the ballot box for Canadians. The overdevelopment of the party system has meant the people have no control over their representative once he or she is elected.

It is a fundamental principle of parliamentary democracy that no Parliament should pass important legislation, leave alone constitutional change, on which the people have not given a mandate. Mandates are given at election time, where new policies must be specifically outlined. Mandates are not given through opinion polls.

In our opinion, the Constitution Act, 1982, should be repealed so that true and effective freedom can be restored to all individuals and to eliminate the collective rights of a few, which is repugnant to a constitutional document of the people.

With respect to a Canada clause, we do not see any need for a Canada clause. If we adhere to the fundamental principles of equality of status and rights for all people, the Canada clause in the preamble dealing with specific groups of people would be an unacceptable appendage. It is a contradiction to the fundamental principle.

The Charter of Rights is included in the Constitution Act, 1982, and so when we call for its repeal, we also call for the repeal of the Charter of Rights. We prefer the greater freedoms we had under our Constitution of 1867. Under that system, while Parliament could take away people's freedoms by legislation, it is not something politicians would do lightly since they must face the electorate in a few years' time. Freedom, once removed, can be restored by a subsequent Parliament.

Today, once the Supreme Court of Canada has ruled limiting individual freedom or limiting the right of Parliament to legislate, there is no appeal. That decision remains for all time unless we abolish the Charter of Rights.

We say the same thing about a charter of economic and social rights. These matters are always in a state of flux. Needs may change from group to group and place to place. There is a continuing need for review and adjustment. All these matters are better dealt with by legislation from time to time as necessary. Flexibility of action is what is required, not constitutional rigidity. I think to some extent your previous speaker indicated to you that this was a concern of his, or theirs.

Federal and provincial governments: We do not have an expertise on the matter of division of powers, and we are therefore not making any recommendations in that respect, but before these powers can be dealt with, people must decide what kind of Constitution they want, what kind of federation they want.

APEC's viewpoint is that Canada is one nation and one people from sea to sea. Canada is one geographic mass from sea to sea to sea, without the right of secession of any of its parts. For Canada to be a nation there must be a strong central government.

Section 91 of the British North America Act says, "It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada." That is the power a country requires to make it a nation. This is the power that should be given to the government of Canada.

The late Dr Eugene Forsey said, "Over and over again the 'Canadian' Fathers of Confederation, French, English, Irish, Scotch, declared emphatically that they were creating a new nation." The same statements were made in the debates by John A. Macdonald and by George Etienne Cartier, that there was one nation. In fact, Mr Cartier says, "Now, when we were united together, if union were obtained, we would form a political nationality with which neither the national origin, or the religion of any individual, would interfere."

It is the deviation from these principles and vision that has caused Canada's constitutional problems.

The relationship between provinces and the Dominion should be symmetrical. There must be equality of status between provinces. In no other way can we maintain Canada as a nation.

There are some things which we feel are absolutely essential to nationhood. One of these is the matter of communications. Communications cannot be broken down. We cannot have 10 communication centres or jurisdictions, but only one. We can only have one immigration policy. Therefore, these should be national.

Because of the disparity in population and income from area to area and region to region, there are probably some social and economic matters which are better handled by a national government to ensure equality of status for all individuals wherever they may reside.

1510

This organization has never at any time advocated the secession of Quebec, the notion of a separate Quebec. It is absolutely essential, however, if Canada is to remain a nation, that the people of Quebec must accept the fundamental principle of equality of status and rights for all

people in the Constitution and that Canada itself is a distinct nation or society, whatever you want to call it, and that the people of Quebec are only part of that distinctiveness.

If the people of Quebec—and I say "people," not "politicians," because at this moment we have only heard from politicians, not the people—cannot accept the fundamental principle of equality of status and rights of individuals, then they will have to separate. Canada will never be free of its constitutional problems if Quebec refuses to agree that the same fundamental principles must apply to all people wherever they live in Canada.

There are some consequences which will flow of course from any decision by Quebec. The first and foremost is that the government of Canada should not allow Quebec to keep its present boundaries. I do not intend to go into this in any detail, but attached to the back of the brief is a document called Partition, which I draw your attention to, in which you will see what I am talking about when we say that the boundaries of Quebec cannot remain as they are today. I think Canadians would generally agree that if in fact there is no other solution, Quebec should be allowed to secede. I do not think they would accept the boundaries as they presently stand. In addition, there are other things which the government should make perfectly clear to Quebec: Sovereignty-association is unacceptable, there will be no common currency, no economic union and Quebec will be treated as a foreign nation with respect to all future relations between itself and Canada.

I have dealt at some length with the question of language, which begins on page 12 of the brief. What I am trying to summarize here for you is to look at Canada and ask ourselves, what is the language of Canada? Surely the primary language of Canada is English. Canada is an English-speaking country with a French-speaking region. Canada is not a bilingual country. "Official bilingualism" is a statement or phrase that was coined by government. Both the Official Languages Act and the Charter of Rights and Freedoms indicate that Canada is officially bilingual only for the purposes of the federal government and its institutions. That does not make Canada an officially bilingual country. If it were so, how is it possible for Quebec to declare itself unilingually French? The Official Languages Act, when first enacted, proved to be a discriminatory and destructive piece of legislation and very divisive for this country. In fact, I think if you look at the Spicer report, you will see that this is what Mr Spicer found all over this country, that it was social engineering.

The truth of the matter is that in the history of Canada there is no such thing as linguistic duality. English was the language of what are now the maritime provinces. At a very early period in our history, before the events on the Plains of Abraham in 1759, that area was looking for self-government. History shows us that whenever a country or geographic area becomes subject to the control of a foreign power, the language of that foreign power becomes the language of government and its institutions. How else can you account for the French language being the language of so many countries in Africa and the West Indies? In none of these geographic areas was French an indigenous language. The English language should spread in the same

way. The development of French colonialism shows that this was part of the policy of the government, as I have set out in some detail in my brief.

What happened in Canada is or should be abundantly clear to anyone who examines the history without bias. After the defeat of the French on the Plains of Abraham in 1759 and the end of the Seven Years' War in Europe and the ceding by France of all its territories in what is now Canada, a fundamental change took place in the position of language in this country. There are no historical documents of any description from 1759 up until 1840 in which you will find the word "language" even used. That includes the Quebec Act of 1774. The Act of Union made English the official language of the United Canadas, Lower Canada and Upper Canada, when they were joined together as a province called Canada. English became the language not only of the province of Canada but, because of the legislation that took place at that time, English is the official language of Canada today because in fact it was the official language and there has never been any legislation passed which changes that position.

We are not endeavouring to indicate that there were no language difficulties during this period of time. Of course there were. There have always been language difficulties. The first major enactment with respect to language is in the British North America Act, 1867, which we now call the Constitution Act, 1867. Out of 147 sections in that act, only one section deals with language. I have set that section out in detail in my brief, but in essence what it says is this: Only the members of Parliament and the members in the Legislature of Quebec have the right or may use, have permission to use the French language in the debates. Then it goes on to say that certain records should be kept in both languages and that those are the languages of the Supreme Court of Canada and the courts of Quebec. There is nothing in here which says the civil service should be bilingual, nothing at all, not even the Quebec civil service. It is a permissive section. It is a section of limitation which says exactly where and when the French language can be used.

It has been claimed that the words "printed and published" include the word "enactment." There is nothing to show that laws need be enacted in the French language, but some people try to extend the use of the words "printed and published" to mean they have to be enacted. I challenge anyone to show me a dictionary which says that the word "enactment" is part of the definition of "printed and published."

1520

The Acting Chair: Mr Leitch, if I just might interject for a moment, our agreement was for 30 minutes of presentation and 15 minutes for questions. I want to indicate to you that the 30 minutes is through at this point.

Mr Leitch: How much time, Mr Chairman?

The Acting Chair: The 30 minutes for the presentation are through. Take a couple of minutes, by all means, to wrap up, but we do need some time for questions.

Mr Leitch: There is much more on the question of language than that, but I would like to say only that in calling for the repeal of the Constitution Act, 1982, we are

also calling for the repeal of that part of the act which applies to official bilingualism.

I ask you to note that Quebec English language rights have been practically destroyed by Bills 101 and 178 and the matter is going before the United Nations.

On Senate reform we have nothing to say other than that, in our opinion, it should be an elected Senate.

With regard to Supreme Court of Canada appointments, we think we have had some absolutely outstanding judges on the Supreme Court and we do not think it is necessary to change it.

On the process of public participation, we would ask the members to give consideration to the right of recall of a member where he votes in the Legislative Assembly or the Parliament in a manner which is contrary to the wishes of the majority of his constituents. Not only that, the people should be able to bring an initiative to the government and the government should be required to place that initiative before the people.

On the process of constitutional reform, we support a constituent assembly and we have set out in some detail what we consider to be the fundamentals with respect to a constituent assembly in any constitutional reform. We think that after there is a constituent assembly the matter should go before the people in the form of a referendum and that referendum of the people should be decided in accordance with the amending formula which would be in the Constitution.

If I might just be permitted to state what that amending formula is, from our point of view, first of all it is as a result of a referendum and the way in which to interpret the voting is a majority affirmative vote in favour of amendment in the total votes cast in the whole of Canada, provided there is a majority affirmative vote in a majority of the provinces, with the two territories being given the status of a province. In this way, the voting of the people as a whole can be given effect to and yet at the same time, when east and west feel the centre controls things, we are giving them some control over the constitutional amendments by saying it is not sufficient just to have an overall majority, but that majority must be in a majority of the provinces.

I would ask you to read the conclusions I have drawn here. Building a nation is not merely a question of putting aside differences. Building a nation is having a vision and establishing the basic principles to be used in attaining that vision. Building a nation is getting down to bedrock and building a structure utilizing the true building blocks of the nation, the individuals.

The Acting Chair: We have 11 minutes for questions.

Mr Curling: I know many of my colleagues would like to ask some questions so I will come directly to the question itself: Do you see language as a tool to imprison the thoughts and expressions of those people who do not speak English?

Mr Leitch: I think this country should do everything it can to facilitate the learning of the English language so that it does not become a problem to those people who come to our country. There are very few French-speaking people, if your question is directed in that regard, who do

not speak the English language in this country. There may be a large block of them in the province of Quebec, but that does not exist in the rest of Canada.

Mr Curling: First nations people, aboriginal people do not speak English. You said one should accommodate that in teaching them English, not to encourage their language at all. Let me just make a quick comment on that. When you want to commit genocide against any people, you wipe out their religion, you take away their land, and one of the most effective ways is to take away their language. So would you say of those aboriginal people who do not speak English, that basically they had better learn English or they themselves will be the object of genocide, a wiped-out nation?

Mr Leitch: I do not agree with that. I think that if language is important to any individual he will retain it himself, he and the group and his people. They live together as a group. The vast majority of Indians today speak the English language. They do not constitute a problem in language in this country. The people who constitute the problem in language in this country are the French-speaking people who want to live in isolation, who want to be separate and distinct. They want to have a special status for themselves. That is not what this country is all about.

In a multicultural country there can be only one language which is the language of government. But the right of every individual to retain his language is a right that I will fight for as much as the right to have English as the language of government, so I do not accept your statements as being part of this organization's policies or way of thinking.

Mr Bisson: There are a number of questions I would like to get into. I would like to follow up on what Mr Curling was saying. If I understood you correctly, you were saying that the English language is not a problem with the native people because they all speak English, but the problem is with the French. Am I correct in assuming that basically is what you said?

Mr Leitch: I think most of our language problems today centre around the French-speaking people.

Mr Bisson: I was reading through your brief. On page 14 there is something very interesting. It talks about education in the French language, and according to some work that was done by your organization, I guess, the following was extrapolated: "When French was the language of instruction in education the result was that it became the language of the land and not just of government. The French Grande Encyclopédie in 1886 outlined the French strategy: 'The best way to conquer the natives was not by overwhelming them with arms but by teaching them French. Innumerable French leaders have since candidly acknowledged the contribution of cultural programs to France's foreign policy.'"

Is not what you are advocating exactly the same as what you are arguing against in your own brief? Is there not a contradiction here?

Mr Leitch: I do not think so.

Mr Bisson: I see it as a contradiction.

Mr Leitch: The language is in fact established. The English language is the established language of this country. I say right in my brief that the English language spread in the same fashion. I know it spread in that fashion. That is the way languages change, and that is the way the country developed, but I cannot be faulted for what happened in 1759.

1530

Mr Bisson: Unfortunately, you know, this is a little bit personal for me. Obviously, if you have not noticed, my name is Bisson. The thing is that I understand quite well the fears on the part of some of the people within this country to either the question of the French or the English language. I live in both of those communities quite well, being fluently bilingual. This is not to say that some of the things you advocate in your brief or that your group talks about are not based on some reality. There are some things out there that people have a problem with.

The problem I have is that what you are advocating is, to a certain extent—I hate to use analogies, but it is the analogy of the father staying at home and saying: "Listen, you're going to do everything the way I tell you to. Don't ask me why because I'm Dad and you must listen to me, and I don't want you to express yourself. I don't want you to sit crooked. I want you to do exactly as I say and do as I do, but don't do as I say," or whatever the saying is.

I have a bit of a problem with that because it does not allow for the full development of the family, for the members of that family to develop according to their own capability, their own needs, their own wants. Surely, if we have learned something in this country, and if we could look at the experiences of other countries of what brought them to strife, racially or culturally or linguistically, it has been the suppression of those rights or the suppression of those feelings, nationalist feelings, within a country that has led to strife.

The one thing I have always prided myself on is that when my forefathers lost the battle on the Plains of Abraham, the good old King of England at the time said: "Listen, I don't want another Ireland on my hands, and I'll allow the French people to be able to develop within their own culture and within their own language, recognizing that they have a part to play in this nation. After all, they were there." There has always been an attempt on the part of the mainstream of our society to allow that to happen in a way that makes some sense.

What I have a hard time with in your brief is that you started off by saying you do not believe in the equality of women. You do not believe in the equality of the French language for the French people in this country. You do not believe in the equality of other minorities. There has to be room in this country for more than just one people, because there is a multitude of people.

Respond to me the best you can, because really I have a hard time. I understand where you are coming from because some of what you are saying is legitimate. People are nervous because of the economy. It is perceived as discrimination, or reverse discrimination, as it is called, and it is something we have to come to terms with, but surely we need to have room to be able to have this discussion among ourselves, to get this behind us.

Mr Leitch: I do not understand where you got this interpretation that we are against—

Mr Bisson: From your brief.

Mr Leitch: —women's rights. I am not against women's rights. All I am saying is that they should not be in the Constitution. At the church I go to, starting this Sunday our rector is going to be a woman priest, and I am joyful that women priests are there.

Mr Bisson: But what you said at the beginning of your presentation was that women's rights—

Mr Leitch: That is not what the brief says. That is your interpretation of it. We do not stand in the way of the French-speaking people preserving their language if that is their wish, but they should do it at their own expense. We are not asking for any cultural setups for ourselves. What the French-speaking people are doing is asking the government to give them all of these things, and I say that is wrong.

Mr Bisson: I am not going to get into the debate with you, because obviously we have entrenched positions on both sides.

Mr Leitch: I am sure, but your interpretation of my brief is a very biased interpretation.

Mr Bisson: The ability you have, sir, is that you are able to protect your culture or whatever by virtue of your majority. That is the difference. In this province, I cannot protect my culture and my language by virtue of a majority. I need to have special provisions within the law to do so, and I would remind you that francophones and other people also pay taxes in this province in order to try to get some of the services we require as citizens. With that, I will give the word to somebody else.

Mr Leitch: What about the Greeks? Why are you not providing the kind of service you are providing for the French for all these other people?

Mr Bisson: Maybe we should.

Mr Leitch: German schools and that, you know.

The Acting Chair: Order, please.

Mr Leitch: It does not make sense.

The Acting Chair: The discussion has not been going through the Chair for the last few minutes. I would ask Mrs Marland to please ask her questions.

Mrs Marland: I must just say at the outset, Mr Leitch, that I have been in politics for 18 years and I am well aware of the process when different levels of government invite the public to come before them and give their opinions. I have never heard a presentation by your organization before, but frankly I view this brief as akin to hate literature. I am very concerned about some of the statements in this brief. I noticed that you very carefully skipped over, on page 13, halfway down, where you say, "We know now that not only do politicians exhibit the propensity to lie to the public, but the bureaucratic élite who put their plans into action are also liars."

Mr Leitch: I have given you an example of it.

Mrs Marland: Excuse me; I have not finished.

Mr Leitch: You interrupted me.

Mrs Marland: I beg your pardon?

Mr Leitch: I said you interrupted me some time ago.

Mrs Marland: I only interrupted you once and it was to get a printout of what it was you were saying. I feel personally, as someone elected by the public, that I am sitting here this afternoon feeling very bruised and battered. I feel that if your organization wants to be revisionist historians that is fine, but I do not feel that you can come to us and say to us as elected representatives of the public, "This is what we want but we must ignore the rest." That is not even being fair to politicians.

What I would suggest to you is that the reason we need special status for different groups with different interests and backgrounds is because their status has not existed officially. I am very upset by some of the statements you have in here, because frankly I think when you say you are willing to fight for different groups to retain their language, that is not what you are saying in your brief. You refer to the Official Languages Act as an example of "social engineering." I think those were the words you used. How can you describe the Official Languages Act of this country as social engineering and then talk about Canada being a nation from sea to sea?

There is not one of us sitting in this room who does not agree with you. Yes, we think this should be a nation from sea to sea, but I do not understand from your perspective how you can see that happening.

Your criticism of politicians: The truth of the matter is that politicians are elected. The public does have control over politicians at the polls. You even refer to the fact that they have to face re-election. You say that mandates are not given through opinion polls. I do not think realistically that any government acts or thinks it has a mandate through an opinion poll.

What I would like to know is how you feel your advocacy for English only is any better than the people whom you criticize who want some French. It is very difficult for me to understand where you are coming from.

Also, could you please explain—you paint every politician and even the bureaucrats as liars—what alternative do you have for a democratically elected government, provincially and federally? You say citizens have had no input on this subject. As far as I know, Bélanger-Campeau and Alaire and the Spicer reports were all from the public. They were not politicians. Perhaps if you could elaborate I might better understand what it is you are saying in your brief and what it is you just said in your final comments.

Mr Leitch: First of all, you said the Official Languages Act was not social engineering, but in my brief I quote, on the same page 13, Richard Gwyn, who was the writer of the book *The Northern Magus*, the biography of Trudeau. He says, "Bilingualism, in truth, was nothing less than a social revolution."

1540

Mrs Marland: That is one opinion.

Mr Leitch: That is his opinion and it is my opinion too, and the opinions of millions of other people outside this room. It is their opinion that it was social engineering.

Mr Bolt: We can give you dozens of examples of the effect of this any time.

Mr Leitch: He lied about it. Richard Gwyn says right in there that Trudeau lied. "Massive change was about to happen.... Trudeau knew this all along.... He fibbed about it as a necessary means to an end.... White lies like this are acceptable tools of every politician's trade." That is what Mr Gwyn had to say about politicians and Pierre Elliott Trudeau in particular.

Mrs Marland: Politicians for the most part across all party lines only try to do the best job they possibly can. They are elected to serve the people they represent. If they do not do that job, if they do not represent the views of the people who elect them, they do not get re-elected. That is the wonderful part of living in a country like Canada, where we live in freedom. We have a democratic system of electing our representatives and I do not know what it is you are suggesting we do as an alternative. Do we have a coalition government at every level and rule by plebiscite on every issue?

Mr Leitch: No, I do not think we are advocating that at all, but what we are trying to tell you is that the over-development of the party system in this country has left the people without any control over their elected representatives once they go to Queen's Park or the Parliament buildings or anywhere else. We do not have that kind of control any more, because you are under the control of your party.

Mrs Marland: Mr Leitch, I am under the control of the people who elect me. When you go to the ballot box you can decide whether or not you want to re-elect me. What I am asking you is, you are making these damning statements about a process for which I do not hear that you have an alternative. Also, you are making very strong statements for your cause. When you really look at what it is you are saying, you are as far out at one side as people are perhaps as far out at the other side, the very people whom you criticize. How can you turn back the history book?

Mr Leitch: I am not trying to turn back the history book. What I am trying to say is that if history means anything to us at all, you build on it. I am not trying to turn back the history book. If you want to look at just the question of language in this matter, which apparently you are, let me point out to you that in my brief I say to you that in fact at the time of Confederation the French-speaking people in this province were less than 1.85% of the population. At least one third of the French-speaking people in this province today are immigrants. They are not people who were native to this province at all.

Mrs Marland: You are talking about Ontario.

Mr Leitch: I am talking about Ontario.

Mrs Marland: I am talking about Canada as a nation. When I say to you, how can you turn back the history book, you are saying that Quebec should not have a special status.

Mr Leitch: That is right. I believe that.

Mrs Marland: But how can you change what is a fact? How can you change the history that has evolved as our country? How can you say realistically that we are

going to have only English? You are saying the same thing that you criticize Quebec for in Bill 101, are you not?

Mr Leitch: There is a question of special status for Quebec. You look at it. It is a special, distinct society in a sense. What I am saying to you is that you cannot put that into the Constitution because there are other regions in Canada that are just as distinct as the French-speaking people. The thing that makes Quebec distinct at all is the fact that it has a language different from the rest of the country. It is the language that is distinct; it is not the society. In fact what we have here is a country of various regions. Much of it is very distinct. Are we going to put the distinctiveness of every region into the Constitution? When that was suggested at the recent conference they said: "Oh, no, we can't do that. We must only honour the French as distinct. We must only give them the right to self-determination. We can't give all the provinces the right to self-determination." That's what the recent PC conference says.

The Acting Chair: I am afraid we have gone way over our time at this point. It is up to the committee members if we are going to allow ourselves a few more minutes to go on. I am in the hands of the committee on this score. At this point, we are over by approximately 12 minutes from the time allotted.

Mr Malkowski: Mr Chair, I think we will close the debate.

The Acting Chair: Okay, since we would not have unanimous consent, I think we should probably close the debate. Thank you, Mr Leitch and Mr Bolt, for that. I appreciate your coming to Toronto for this and I would ask you, if you have any further materials you would like to get to the committee, to please send those materials along.

Mr Bisson: If you would just allow me a couple of minutes before leaving, I want to say something sincerely. I apologized a little while ago for getting somewhat excited. I think you can understand why. It is an issue we both feel strongly about, but I really do believe there needs to be a bigger and a better attempt at communication so that we can start understanding that as Canadians what all of us want is to keep this nation together. I think we need to enter into a process of trying to communicate each other's positions so that we can better understand, because the reality is—

The Acting Chair: Mr Bisson, you have actually put me in a difficult position with some members of the committee for doing that. I apologize. I thought what you had to say was one sentence and it was not, so I can only say that we need to adjourn the committee at this point. Thank you again very much for coming before the committee.

We will adjourn the committee meeting today. We will be meeting tomorrow morning at 9:30. Please note the different time, committee members, 9:30 tomorrow morning here for the next session of the committee.

The committee adjourned at 1547.

CONTENTS

Wednesday 14 August 1991

Coalition of Multicultural Groups	C-1355
Doug Purvis	C-1363
Guy Laforêt	C-1367
Canadian Council on Social Development	C-1374
Alliance for the Preservation of English in Canada	C-1379
Adjournment	C-1385

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Première session, 35^e législature

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Le jeudi 15 août 1991

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l'Ontario au sein de
la Confédération

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Table of Contents

Table of Contents for proceedings reported in this issue appears at the back, together with a list of committee members and other members taking part.

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Table des matières

La table des matières des séances rapportées dans ce numéro se trouve à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et des autres députés ayant participé.

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

Thursday 15 August 1991

The committee met at 0944 in room 151.

The Acting Chair: Good morning. I would like to call this committee meeting to order. I would like to welcome first of all those who are joining us on television today across Ontario. This is the select committee on Ontario in Confederation.

Before us today we are going to have André Raynauld. I would ask him to come and take his seat before the committee, please. Welcome. I hear you are willing to present in English, I believe, before the committee today. You certainly have the choice. We are glad to have you. You have one half-hour and I hope you will leave some time in that period for questions. Before you begin, perhaps you would introduce yourself.

ANDRÉ RAYNAULD

Mr Raynauld: I am a professor of economics at the University of Montreal. For a time I was also chairman of the Economic Council of Canada, back in 1971 through 1976. After that I made the mistake of going into politics in the Quebec assembly. I resigned in 1980, just after the referendum, to come back to my academic career.

My presentation this morning will be relatively short, but I must say first that I am honoured by your invitation to appear before you. I sincerely hope that in these critical moments and in the name of all Canadians you will come forward with substantial proposals for political and constitutional reform.

To save time, I will try to present my observations in point form and then to concentrate on the essentials. First of all, I believe that Quebec's separation would be a tragedy for the people in Quebec, but also for the people in the rest of Canada, and among them, for people in Ontario especially. With Quebec independence, I can see no direction other than towards the fragmentation of the Canadian economic union under the erroneous excuse that a north-south alternative would be more beneficial.

The feelings and convictions of the population in Quebec since Meech Lake rule out the business-as-usual approach and the status quo. There is a political crisis going on and developing in this country. The latest evidence is perhaps the result of the by-election last Sunday when a member of the Parti québécois was elected. Therefore, I believe also that nothing less than a substantial change in our political system is needed if our country is to be preserved.

Needless to say, Ontario has the most critical role to play in this reform. I had the privilege of participating in the Group of 22, along with many outstanding Canadians from across the country, and you are surely aware of the general direction taken in this report. While my combination of proposals would be a bit different, the approach is the same. Essentially I am in favour of a substantial decentralization of powers, but counterbalanced by constitu-

tional rules and associated with the reform of institutions to preserve and enhance the Canadian union.

The more specific proposals for reform are the following:

1. The removal of all restrictions to the application of the Canadian Charter of Rights and Freedoms;

2. The constitutional guarantee of the four basic economic freedoms: the free flow of people and the free circulation of goods, capital and services within Canada. This guarantee is perhaps the most important suggestion. It calls for the elimination of all interprovincial barriers, such as in procurement, agriculture, construction, alcohol, discriminatory taxes and subsidies and so on;

3. The elimination of the federal spending power in matters of provincial jurisdiction. The use of this power has probably done more than anything else to undermine the federal nature of the Canadian political system. It has led to ruinous duplication of public services and confusion of roles between governments. It goes against any notion of a division of powers, which is supposed to be the essence of federalism;

4. With the elimination of the federal spending power, I am not sure if there is still room for the establishment of the so-called national standards. In case there is, I would want to constrain or limit the application of this notion to what is absolutely necessary to achieve the free circulation of goods, services, capital and people. Admittedly this condition may justify a more or less considerable number of standards and may be less constraining, perhaps, that it looks. Nevertheless a justification is better than arbitrariness, which is typical of the present situation;

5. There are other solutions to conciliate both the need for decentralization and the need for economic integration and mobility. A first one would be to encourage interprovincial negotiations so as to harmonize policies and regulations in fields of provincial jurisdiction. A good example of this approach is the recent interprovincial agreement on trust and savings companies. Indeed, this concertation could be institutionalized or even entrenched in the Constitution in the form of either an interprovincial agency or administrative tribunal in major fields such as health, education, training and fiscal policy. The idea is to involve the provinces in the establishment of standards. I am not against standards, but I would want the provinces to be mainly responsible for those standards because it is in their field of jurisdiction, rather than allow unilateral decisions on the part of the federal government.

6. A second complementary approach would consist in giving a federal status to the Senate and to a number of central agencies and crown corporations such as the Bank of Canada, the CRTC and several others. This could be achieved in several ways. The most obvious is to give formal representation to the provinces on the boards of directors, and in the case of the Senate, to leave the appointments or the

election, as the case may be, to the discretion of the provinces.

7. Another component of constitutional reform is equalization. Having an eye on the acceptability of the package, I believe that equalization must remain a key feature of the Canadian fiscal system. By equalization, I mean unconditional grants, with no strings attached and no national standards, so as to allow poorer provinces to provide a minimum level of public goods and services if they so wish. I know that equalization may be criticized in providing wrong incentives, as all redistributive measures do. It may not be fully efficient, but equity considerations militate in favour of such a system, and being unconditional, not only does it not interfere with the true notion of federalism but it provides the resources that are necessary to the actual use of the powers and responsibilities that the provinces have. I will come back to this in a moment.

0950

8. The precautions and assurances having been taken to maintain and reinforce the integration of the Canadian economy, the avenue is wide open for an effective and substantial decentralization of the political system. First, with the elimination of the federal spending power, the field loosely defined as social policy would return to the provinces, where it belongs anyway in the present Constitution. This includes education and training, income security, unemployment insurance, health, culture, housing, to which I add natural resources, which is already there.

A very rough estimate of the federal expenditures involved in this devolution process is 20% to 25% of total federal expenditures. By any standard, this would represent a huge transfer of fiscal resources to the provinces without any substantial change in the Constitution itself, which is a merit of the proposal. Mind you, some particular aspects of the matters mentioned would still require federal presence and central policies. International trade in resource products is an obvious example. Other federal and provincial programs should be re-examined and reassessed to see if they are really needed at that level of government in the light of efficiency requirements and significant spillover effects among provinces.

9. At the other extreme of the spectrum, the federal government would have sufficient exclusive powers to manage the economy and to deal with national and international issues of all kinds. The main fields that come to mind are defence, interprovincial and international trade and transportation, monetary and fiscal policy, competition policy, equalization and the regulation of the capital market, including securities. In a sense, the economic policy belongs to the federal government and it may be that the federal government might need additional powers to deal with economic issues. On the other hand, social policy goes to the provinces and we eliminate at that point most of the irritants that have been so widespread in recent years.

10. To this restructuring process I would add the opting out or opting in approach, proposed again recently by Tom Courchesne, in case some provinces or regions would be adamantly opposed to any decentralization. This alternative is feasible, as we already use it in some form. In the

years ahead, it could become the master key to the resolution of our differences and preserve our respective distinctiveness in a stronger Canada.

To save time again, perhaps I could move a little further. After that part of the brief I was trying to explain and present the justification for this combination of proposals, but I would like to perhaps insist a little more on a piece of information that I asked to be distributed, and this refers to table 1 in my presentation. This is a little piece of original information that I prepared for this occasion. In fact, I simulated the impact on government revenue of a political transfer of \$25-billion worth of expenditure programs and tax points in favour of the provinces for fiscal year 1990-91, because the question always arises, "If you decentralize things, what happens?" All provinces seem in one way or another to assume that it would not be beneficial to them. For example, I heard several people coming from the Atlantic provinces saying: "No, you can't decentralize this country, because we are going to lose. We will not be able to provide the basic services we would like to offer to the population."

I asked myself what would be the implications of a transfer of both program expenditures and responsibilities and tax points or revenue. I then assume that the transfer of tax points would be applied to the personal income tax exclusively. As you may know, the equalization system is based on 39 tax sources, but the most important one is income tax, and I assumed then the equalization, or the transfer of the resources, would take the form of points on the income tax.

The basic federal income tax at the present time generates a revenue of close to \$59 billion for the federal government. If you transfer \$25 billion, that represents a proportion of 42.4% of the federal income tax. If you transfer \$25 billion, you are transferring in fact 42.4 tax points on the basis of the basic federal income tax. The \$25 billion is an order of magnitude, an assumption I make which is consistent with what I said before, that if you transfer social policy, roughly speaking you transfer about 20% to 25% of federal expenditures. I took the \$25 billion, it could be \$20 billion, it could be \$30 billion, but it is the basic assumption.

Since the yield of a given tax point is substantially different from one province to another, the transfer would produce different increases per capita, the poor provinces receiving less and the richer provinces such as Ontario receiving considerably more. So if you transfer tax points it is obvious that some provinces, the poorer provinces, will lose and the richer provinces will gain.

However, this transfer of income tax to the provinces would be subject to equalization. Using the present formula with no change except for the ceilings, so I do not take the ceilings into account—those ceilings, you may remember, were introduced in 1987-88 so I put that aside and used the present formula—one can calculate the additional payments which would be made to the provinces under this equalization system and assuming a \$25-billion transfer. This time, the interprovincial distribution of the benefits goes the other way, in favour of the poorer provinces.

The most striking and I must say unexpected result of this exercise is that when you add the two sources of revenue, the revenue from the tax points and the equalization payments, one gets almost equal benefits per capita for all the provinces with the exception of Ontario. Ontario gets 20% more than the average for the other provinces in spite of the fact that it does not receive equalization payments. Ontario benefits because the yield on the tax points for Ontario is higher. It does not receive equalization, but all the other provinces, being poorer and having yield on this income tax which is less favourable, benefit from the equalization.

If you add the two you get almost equal per capita benefits, and that is on the table you have before you. I transfer 42.4 tax points. This is \$25 billion. I calculate what would be then the yield on those for each province, the yield on those tax points. I add the equalization payments for each province. If you look at that column on equalization payments you will obviously see that the poorer the province, the higher the per capita payment is.

If you add the two it is really extraordinary that you find almost no difference between provinces. You have an equal per capita benefit and that is fundamental. It is very important because it means the fiscal capacity to provide public services is the same for all. This is really remarkable. This is probably, in my view, the strongest argument so far that has been found in favour of decentralization. Quite frankly, I did not expect that. I thought there would be some curious impacts, but it is probably the strongest argument in favour of decentralization and thanks, of course, to the equalization system we have in this country.

Let me add that there is a small snag in this operation, but it is a snag that can be overcome easily and is perhaps obvious. What is obvious is that if you transfer tax points or program responsibilities you increase equalization payments overall, and the federal government will have to finance this increase out of reduced fiscal resources. If you transfer fiscal resources you say, "You increase equalization payments but you have a base which is narrower than it used to be."

The interesting question is how much is involved. The \$25-billion transfer implies, according to these calculations, an increase in equalization payments of \$2.8 billion. Now this \$2.8 billion is equal to 3% of total federal revenue after the transfer. It is not very much and one obvious solution to this difficulty would be to transfer more program responsibilities than tax points. That would be easy to do. You say, "We don't want to have increases in equalization payments," so you transfer more program responsibilities than tax points, or the federal government makes up the difference by increasing other federal taxes. But that is not easier than to anticipate any change of 3% order of magnitude. The implications, though, for the distribution of the resources across the provinces is very interesting.

That is what I meant to present to you.

1000

M. Bisson : Bienvenue et merci beaucoup pour votre présentation. Vous avez choisi de faire votre présentation en anglais, alors, je vais faire la même chose.

I just comment before I get to my question that you say it would be as easy as raising taxes. I would say raising taxes in any jurisdiction is very difficult politically these days, for obvious reasons.

Basically, what it comes down to is that you are talking about a federal government not really having an ability, or taking away the ability to be able to set national standards. When you talk about transferring through the mechanism you speak about—I do not understand it as clearly as you do—you take away the one tool the federal government has to be able to set those national standards, mainly through transfer payments.

If I were sitting in the Maritimes or up in northern Ontario or wherever it might be, I would be afraid of where that leaves me because of my geographic situation, lack of population, tax base and a strong economy, where that leaves me in comparison to other Canadians when it comes to access to services, and I wonder what that does to really strengthen a nation, if you can clear that up.

Mr Raynauld: First of all, there would still be some standards, but the standards would be developed with the provinces rather than the absence of the provinces. It seems to me it is certainly essential to preserve some standards and simply to make it possible for people receiving old age pensions to move from one province to the other.

Mr Bisson: I agree with the premise that it gives more voice to the provinces and being able to work towards developing those standards. But if I understood correctly what you have in your brief, you are advocating that the provinces determine what level of service they are going to provide. What I fear is that there might be financial reasons, political reasons or whatever they might be that a province in whatever situation says, "I ain't going to provide that standard any more." Then you have two classes of Canadians, those with and those without. That is what we have been fighting against in this nation for all these years.

Mr Raynauld: You are perfectly right, except that this is the whole point of having done this little exercise. It is not true. The poorer provinces would have sufficient resources to provide the same level of services as any other Canadian under the equalization formula. So if they do not do it, it is not because they would be short of money. They would have the same amount of money coming out of the equalization payments so they would be able to provide those services.

Mr Bisson: They would also have the ability to choose not to.

Mr Raynauld: Oh, yes, they could choose not to, but are you going to impose a thing from one province to another if the population in one province believes—I do not know what—that hospitals should not have restaurants in them any more? Would you say, "No, you're going to have some restaurants in your hospitals," or, "You are going to provide ancillary services free?" Some province may want to charge to provide those services. It is part of the democratic process that a province would be free, effectively, to decide what it wants to do. But the very special feature of this is that they have to provide enough services to

make sure there is still free movement of people in this country, that there is still free movement of capital services and goods. That would be the constraint on the provinces, but they would have the financial resources to provide the same services as others.

Mrs Y. O'Neill: Monsieur Raynauld, I have a number of questions. You are the first of the Group of 22 who has come before us. Just to continue the questioning as it has been going, would you see that services as such that we know, whether educational or health-related, are more tied than in your model to politics, to setting of priorities?

Mr Raynauld: Quite frankly I do not understand your question. I am sorry.

Mrs Y. O'Neill: Because the provinces would be given extensive new jurisdictional rights, particularly regarding taxation in your model, would that mean the standards and the services that we, as Ontarians and/or any other Canadians, are going to have access to would be much more related to who was in government at the time; in other words, to the politics of the time?

Mr Raynauld: All governments would be constrained by this rule over mobility, so they would have the duty not to impose any hardship on anybody else outside their province. That would be constant. Of course, each government would be free, as it is now, to introduce laws and change some programs. The programs may be in the end, in the social field, a little more different from one province to the other than is the case at the present time. It could be more different, but again that constraint you cannot impose costs on others, the constraint that you cannot restrict the free flow of people is a very important constraint. We would come, I think, very close to the present situation with the added benefit—or perhaps some people would think it is an inconvenience—of the participation of the provinces in establishing the standards needed to maintain this free mobility.

Mrs Y. O'Neill: I thank you for table 1, because it is interesting. I do not know all the names of the people on your list of 22. Were any people from the maritime provinces actually a part of the group?

Mr Raynauld: Yes, there were people from across Canada. I am not sure they were from every provincial capital, but yes, there were about three or four, if I remember correctly, from the Atlantic provinces.

Mrs Y. O'Neill: So they had input.

Mr Raynauld: Yes. I was thinking of those people when I said earlier that the assumption on their part, within the group, was that they would lose. That is why I did this exercise. At that time I was not arguing against them, I was simply saying, "Well, possible." But now I have made this little calculation to respond to that preoccupation they had.

Mrs Y. O'Neill: One of the recommendations of your group, which you have not attended to this morning, was the legislated presence of the native population. Could you tell us how you saw that happening.

Mr Raynauld: We discussed this question and the Group of 22 had some recommendations. The gist of their approach was that in the end, the aboriginal people should

have the right to self-determination. I would perhaps be more specific by saying that I think there was wide agreement on that, that in the end we will have to give provincial status to the Indians across Canada. That would be the way to do it.

There was no doubt in our minds that they would have to participate in federal-provincial meetings, that they would have to be present, and that their interests should be defended by themselves, not only by us. The idea was that over time, more and more powers could be given to them, but I think it is simpler to say, and this is the way I prefer to say it, that we should give them provincial status. There are several people now who have thought about that, and I think it is a feasible solution and a concrete solution. We do not necessarily need to have contiguous territories; one province could be scattered. There would be some negotiations, of course, on what territory would be covered. But essentially, it is the people that count, and the people could organize themselves a lot better if they had provincial status. That would solve a lot of problems.

1010

The Acting Chair: Before we go on to another questioner, I notice the Conservative Party has not put up hands. Do you have a question?

Mr Harnick: Following my colleague's question, I believe it is the Northumberland group in the Maritimes that has come up with an opposite approach to the Constitution from the Group of 22. In fact, they look more at strengthening the federal government as opposed to decentralizing. Have you had any discussions with them in terms of reconciling the positions?

Mr Raynauld: No, not with them, but if you spoke to several people in the Group of 22, they would all object to the assumption that the Group of 22 just proposes decentralization and the devolution of powers, because in that report, in some other recommendations, you have a reinforcement of the federal government. It is a matter of weighting the things to see, do we want more decentralization and less federal government?

A lot of members in the group would take objection to that. They would say: "That's not what the report says. That's not what we have said." Because of the way I presented it this morning, I presented a number of measures to decentralize things, but one is tempted to forget that at the same time, on economic issues, on economic policy matters, the federal government should be strengthened, not weakened.

Perhaps some people would say it is having it both ways, but it is not really. We say, "Let's have social policy at the level of the provinces. Let's have economic policy at the federal level, and we will need additional guarantees to reinforce the federal government's power to regulate the economy." So in the end are we opposed to people who say, "We want a stronger federal government"? Not necessarily, but in its own field of jurisdiction, which is economic essentially.

That being said, we also say at the same time to decentralize in the field of social policy. It becomes a matter of

judgement whether this set of proposals is more decentralization against reinforcement of the economic union.

There were certainly a lot of members in the group, and I include myself in that group, who would say, "No, don't forget we want to reduce all interprovincial barriers in this, for example. That will be done through the federal government, not through the provinces." At the same time, we say that we will have to help the provinces come together and accelerate the process of getting things done. As you already know, as we all know, it is a very difficult process when you bring together 11 provinces to sit down and come to some agreement. So we thought there should be other institutions to help the provinces come to terms with the issues, rather than say, "We'll go home and we'll come back next year."

As I said this morning, we could think of a kind of administrative tribunal to oversee things. We could think of a different role for the Senate that would monitor these understandings and agreements between the provinces. We want to reinforce the Canadian economic union, not weaken it. That is probably the answer to your question.

Mr Harnick: What has been the reaction, from your perspective, to the recommendations from the Group of 22 in Quebec?

Mr Raynauld: There are two reactions. One: "As it is, we like it. It is a good step in the right direction." Second: "Why is it that you do not talk about the distinct society in the Group of 22? Why in the world do you not commit yourself on questions of the veto to change the Constitution, and questions of what limits would apply to the Charter of Rights and Freedoms?" This has been typical: "It is a step in the right direction, but we do not understand something, and we suspect you do not go far enough." One minister said in public that any proposal that did not start with the proposition that Quebec is a distinct society would not be accepted. My answer to that is that if we were to have the proposals we have put forward, perhaps there would be a lot more distinctiveness across Canada than there is at the present time. Perhaps we would have the substance, if not the word for it. Quite frankly, the group thought that this word—it is not that we were against using it; it is just that we thought it had become a symbol or a myth. We said, "If we start with this, we will perhaps not achieve as much as we now do."

The Acting Chair: Merci, Professor Raynauld, for your very fine contribution, and also for the work of the Group of 22. It certainly has added another dimension to the whole discussion of the Constitution and the future of our union.

I would like to make a comment to the members of the committee. One of the concerns I have as Chair is the fact that we have been starting about 15 or 20 minutes late. The reason I mention it now is that there were a number of people on my list who I could not get to. When we begin so late it means that my ability to add speakers, and go a little bit over the time for a particular deputation, is then limited, and it means I actually have to cut people off the list who ordinarily I would be able to support. So my apologies to the people who did not get to ask questions of

Professor Raynauld, and I hope you understand the kinds of time constraints I am under.

1020

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

The Acting Chair: I would like to welcome the environmental panel to the select committee on Ontario in Confederation. First of all, would you introduce yourselves and indicate your respective organizations.

Ms Vigod: My name is Toby Vigod and I am the executive director of the Canadian Environmental Law Association. I guess I can quarterback the panel for you. We have Franklin Gertler who is a partner with Hutchins Soroka and Dionne in Montreal, and is a constitutional and environmental lawyer; Marsha Valiante who is an environmental lawyer, and who will be joining the faculty of law in Windsor; and Paul Muldoon, who is counsel and research director to Pollution Probe. I guess we have all written extensively in the area and we teach as well.

The Acting Chair: We have two hours for your presentation, and it is my hope that you will leave a significant part of that for questions from the members.

Ms Vigod: I am very pleased the select committee has taken the time to establish this environmental panel. I believe the members of the committee should have a copy of the brief entitled, "Environmental Protection and a New Constitution" which is under CELA's letterhead and which Franklin and I co-authored. As well, I believe a summary submission prepared by Paul and Marcia has been distributed to the committee.

I would like to outline briefly what we are going to do. Mr Muldoon is going to start by describing the rationale for constitutional recognition of environmental rights. Marcia Valiante will discuss the nature of the rights and the options for protecting environmental rights. Mr Gertler will describe the possibility of amendments to Ontario's Constitution, a creative solution. I will end up with some remarks on the issue of division of powers.

Mr Muldoon: My task in opening this debate is to discuss what is perhaps one of the most important aspects of constitutional reform. The title of our submission, I think, summarizes the best justification for the type of reforms that I will be talking about; that is, the inclusion of some sort of environmental rights within the context of the Constitution. The title of our submission is "Environmental Rights and the Constitution: Towards An Environmental Democracy".

When all is said and done, in our view it is absolutely imperative that our democracy recognize the inherent value of nature, and the inherent value of looking after the ecosystems which sustain us. In the end, it is that notion of environmental democracy which is so important. What I would like to do, then, is to go through why environmental rights are important, and why they should be included in a package of constitutional reforms.

I think it can be said in summary that there are many divisive factors, and I am sure you have heard many of them. I am sure you have heard a lot of things which divide Canada. The environment is one thing that unifies Canada. It is a shared value. We have a diversity of lands,

of rivers, of different ecosystems. We have a tremendous amount of differing and wonderful urban and rural landscapes. When you put that environmental package or environmental milieu together, there is one thing that is shared by Canadians, and that is their belief and love for the environment.

It would seem that fundamental value then should be reflected in the supreme law of the land. It is that shared value which represents, we think, an intrinsic part of the social, political and economic fabric of the nation. So I think the environment does have a role to play in constitutional reform, and there are a number of roles it can play. The one I would like to talk about is the notion of environmental rights.

I have identified six reasons, six rationales, for inclusion of environmental rights in the Constitution. These reasons justify the inclusion of some sort of right to a healthy or healthful environment in the Constitution. The nature of this right, the character of this right and how to do it I will leave to my colleagues for discussion. My opening statement is trying to really convince and provide some rationale for including it. The mechanical, legal, technical parts we can get to later.

Let me just try to explain six reasons why it should be included and why we urge you as a committee to work federally to include a constitutional right to a healthy environment, and then do what you can on a provincial level to enhance and promote that right or set of rights.

The first reason is that environmental rights empower people to protect the environment that sustains them. This is perhaps fundamental to the whole notion of environmental democracy. When we talk about constitutions and supreme laws, these are not documents which are hollow. These are meant to empower people to do and to give them rights and duties under law as a part of the social contract of society.

It seems incumbent that when we talk about the environment, which is important from the point of view of the economy, in terms of social issues, in terms of people just looking after their own property, their own person, and for future generations of users, they need tools. They need opportunities to do what they think is appropriate to protect the environment. Unfortunately in Canada, especially at the federal level, there is a complete lack of opportunities to do that for the individual. By including a right in the Constitution, it would certainly enhance that.

The second reason to include environmental rights in the Constitution is that environmental rights instill the concept of accountability of governments to wisely manage natural resources. By and large, government has taken the view that it is the guardian of the natural resource base of the country and of the provinces, which is true, but it cannot do that without some sort of checks and balances, without some sort of accounting system, without some sort of notion of responsibility. In effect, they hold those resources in trust, and as a trustee, they owe a fiduciary duty, a very high-level duty, to look after those resources. They look after the resources for present users, but they also look after the resources for future users, future generations

of people, of Canadians. If that is true, if they do hold these resources, then who holds them accountable?

My view is that those mechanisms of accountability are weak and in some cases devoid. Environmental rights would allow various legal mechanisms to be triggered to ensure that governments are accountable for their decisions. They are the government. They ultimately decide. There still should be room for mechanisms of accountability to ensure that the decisions are best for the country and best for the environment.

The third rationale for environmental rights is that environmental rights provide a means to evaluate and determine the appropriate allocation and use of resources. Resources are finite. Who gets what, how much and when? These are fundamental questions, but so often, although these decisions are taken in the public interest, those who bear the risk, those who bear the cost and those who ultimately must suffer the consequences of the decisions are not even included in the decisions. That is a problem.

1030

Let me give you one example. When we talk about standard-setting, especially at the federal level, whether it be drinking water or air quality, what we find is that these standards are developed and implemented without the input of the public, without the input of those who must bear the risk of those standard-setting mechanisms. There must be some sort of regime in place to help, assist and provide the input of the public into those very important decisions.

The fourth reason is that environmental rights must recognize, simply, the inherent value of nature and natural resources. When we talk about a rights approach, we usually talk about people having rights. The question is, who represents the rights of nature, of the wildlife, of the public resources, of trees? Who is the guardian of those rights? The answer is everyone. If we all share in the common resources of this country, why is it that the people, those who are closest to it, are not able to stand up and protect the environment for its own sake? Someone must be the surrogate of the environment in the legal processes, the administrative processes, in the political processes of government. That is the basic notion of environmental rights, so that someone can speak for the environment for its own sake, to empower the environment so it can have a voice. Where others are trying to divvy up the environment, someone has to speak on its behalf.

The fifth reason to entrench environmental rights is more of a global one in that environmental rights are slowly becoming recognized as rights of international law. It is a fairly new regime. Over the years we have heard about human rights, about social and political rights, about economic rights. Gradually that is being translated into environmental rights for individuals and the public to protect the environment. Certainly in 1972 the Stockholm declaration expressly recognized this right to environmental quality, and a whole number of other international declarations have implicitly recognized the right to quality of life and probably environmental quality. By Canada taking and by this committee urging the federal government to

take a proactive way and include and entrench environmental rights, what in effect you are doing is slowly codifying the global regime of international environmental rights and trying to put it in the context of national constitutions.

We have all heard about the World Commission on Environment and Development, the Brundtland commission. Certainly they are very strong on this point. In fact, the legal experts' report to the Brundtland commission recognized the need for these types of rights. In their recommendation, they suggest in their report that a right goes this way, "All human beings have the fundamental right to an environment adequate for their health and wellbeing," and, "States shall ensure that the environment and natural resources are conserved and used for the benefit of present and future generations."

The sixth and final rationale for inclusion of environmental rights in the Constitution relates to my opening comments on why the environment should be on the table in terms of constitutional reform. Coming from a public interest group that receives well over 100 phone calls a day from people asking about issues dealing with the environment, and looking at the polls and looking at the broad and I think sincere public interest in protecting the environment, it is unequivocal, in my view, that the environment is a fundamental value of Canadian society. We may express it in different ways and we may understand it in different ways, but the environment is as much a part of Canada and the value fabric of it as any other value.

If it is such a fundamental, sincere and deeply held value, from the Prairies, from the west coast, through central Canada to eastern Canada, then why should it not be included in some form in the Constitution as a fundamental value worth protecting, to keep that natural heritage alive and entrenched so that future Canadians can enjoy the past and perhaps help us enhance the environment for those future users and future Canadians? In this context, the Constitution reform package, including environmental rights, would not only have a legal significance and a political significance, but also a very important symbolic significance, showing what are our fundamental values.

Those are the six rationales, in my view, for inclusion of environmental rights in constitutional reform. I just want to mention very briefly the typical arguments of why we should not include them.

One of them is the fact that they think there is going to be some notion that the courts, the administrative tribunals and the bureaucracies will take over the notion of the environment and basically strip or usurp the legislative function. This is proven wrong both theoretically and practically. The legislatures have authority over the environment in environmental rights. What the environmental rights basically allow is to allow the public a voice, a legitimate, a routine and a formal voice, in those decisions. It does not create anything new except for access by people to protect themselves in the environment.

In terms of the floodgates argument, that we are going to have litigation, empirical evidence again suggests that is simply not true. The courts have never been a convenient way to resolve issues except when there are issues that

ought to be resolved. The empirical evidence which is referred to in some of the literature demonstrates that.

In closing, I urge this committee to recommend the inclusion of environmental rights in a constitutional reform package. I think it would help the environment and it would help people protect the environment.

What I will do now is turn the microphone over to my colleagues to describe more specifically the nature and content of the rights I am suggesting, and try to rationalize what they should look like and some of the options available for you to recommend in this regard.

Ms Valiante: I am Marcia Valiante, just to remind everybody. I also would like to thank you for the opportunity to talk to you today. I think it is a really important aspect of your deliberations and I hope you will listen to us.

One of the things we have included in our package, the thing that Paul and I wrote, is an article that describes in a little more detail, also in a little more legal language, some of the things we are going to be talking about today. That is part of the package you are getting.

What I want to talk to you about is the nature of environmental rights, just to describe in a little more detail what we mean when we talk about environmental rights. It seems a very general kind of statement to talk about environmental rights, and I want to flesh that out and say specifically what we mean. I am not going to give a definitive definition or language that should be included, but I want to leave you with a number of concepts that we mean when we talk about environmental rights.

I want to start by just making a distinction between substantive rights and procedural rights, because I am going to divide them between those two. Substantive rights are rights that compel a certain outcome, for example, how persons or the environment should be treated, such as the right to quality. It is the outcome of quality that the right protects, whereas procedural rights are rights that deal with process, about how decisions should be made. My major thrust that I want to talk about today is the substantive environmental rights, but I will mention the procedural ones a little bit later.

1040

The substantive rights we are recommending be included in environmental rights are, first of all, what we have called the right to a healthy or a healthful and sustainable environment. The way the Brundtland commission refers to that is an environment that is adequate for human health and wellbeing. So the concept is an environment that is beneficial to the quality of life, however you want to refer to it, and we have chosen the word "healthful," which is kind of a mouthful, but it gets across the idea that the environment is essential to human wellbeing, and that is the essence of that fundamental right.

The breadth of that right depends a lot on how broadly you define "environment" and we would take a broad definition of "environment," to include not just the physical environment and the biological environment but the social, cultural and economic conditions that make a quality life for human beings.

The second fundamental right is the right to the conservation of natural resources and the environment for the benefit of both present and future generations. The important element to this is that a right to a healthy environment has to be sustained over time. That is why looking at both the present uses of resources and trying to maintain their use into the future is essential to any formulation of environmental rights. So it is a right that takes account of the rights of the future and not just the rights of today.

The third aspect of environmental rights is the right to the protection of functioning ecosystems and biological diversity. This is a right that ensures the environment will be healthy and sustainable into the future and includes protection for things like endangered species and biological diversity in the forms of life that are protected. This right only indirectly benefits human beings, but it more directly benefits the environment and all other species we share life with on this planet.

Those are the three fundamental elements of the substantive right to environmental quality, but these rights imply a number of corresponding duties which we would spell out in more detail and not just leave them aside, because I think one of the elements of holding a right is holding the expectation that the actions of others will be consistent with your rights and with the rights of everyone else who holds that right.

The duties we would spell out are: The duty of the government, as the trustee of public resources, to conserve and maintain those resources for the benefit of present and future generations, which is what Paul referred to as a public trust. The second element of the duty is the duty in individuals not to interfere with environmental quality, in other words, not to interfere with other individuals' fundamental right to environmental quality. The third duty, which is a positive duty, that we would include is the duty on governments to make and enforce laws to implement the public's environmental rights.

Those are the elements of what I have called the substantive right to environmental quality. I will really quickly go beyond that and talk a little bit about procedural rights. The reason to talk about procedural rights is that there are a lot of problems that individuals have right now with being able to protect the environment and a lot of those have a lot to do with the historical evolution of environmental law. The common law is a regime that has traditionally protected private property rights and left it to the government to protect public rights. So an individual is very limited in his or her ability to protect the environment generally. Unless you have some property right that is harmed, you are, in a sense, disfranchised. You have no legal access to protect your environment and the environment of everyone else in this room.

The procedural rights I am going to outline are a number that try to overcome those difficulties that are built into our legal system right now. I will just run through them quickly. One is the creation of a legal cause of action, which is just a legal mechanism for allowing people to protect their substantive environmental rights. The second one is to reform the law of standing, which are the rules about who can bring a legal action to protect the environ-

ment. The third one is to open up environmental decision-making at the administrative level and to allow the public into that process as a right and not as a discretion as is the case today, and that includes public participation in the setting of standards, in regulation-making, in the making of regulatory permits and licences and abatement orders.

Finally, one procedural right that needs changing or looking at is the difficult one of who bears the onus of proof in environmental litigation. This is getting kind of technical so I will not go into detail on it, but in environmental court cases proving causation is very difficult to do in an era of uncertainty and lack of information. So that is another procedural right.

That is a summary of the kinds of rights we are talking about when we talk about environmental rights. The next thing I want to do is just run through quickly the three options for protecting environmental rights. Those three options are, first, inclusion in the Charter of Rights and Freedoms; second, inclusion in the Ontario Constitution; third, the adoption of an environmental bill of rights by provincial and federal legislation.

The first option: Inclusion in the Charter of Rights is important as a way of making environmental rights part of the supreme law of Canada. Inclusion in the charter would put environmental rights on the same footing as other fundamental civil, political and social rights in Canada. By putting them in the charter it would recognize the environment as fundamental to the quality of life in Canada. This is the symbolic value which Paul touched on. It would give right-holders the power to bring about change to protect the environment and a certain moral dignity for the environment and for people who want to protect the environment.

In practical terms, inclusion in the Charter of Rights requires the right to be used as a yardstick in measuring actions taken that have the possibility of interfering with that right. What it does in practical terms is it creates a strong presumption that environmental rights should take precedence over less important and more fleeting considerations in day-to-day life. However, one of the limitations of using the charter is that most rights that are in the charter apply only to government action. There are ways of modifying that by including environmental rights in a special section of the charter, so it is not something that cannot be overcome, but there are many rights in the charter now that only apply to government action.

One of the other limitations of including environmental rights in the charter is that they would necessarily be put in very succinct and vague terms. One of the things you would not likely include are the procedural rights in any great amount of detail. The charter as a legal instrument is also only enforceable in an incremental way. It moves, in terms of interpretation, case by case by case, and profound change can come about very slowly because of that, just because of the nature of the charter. However, once the charter is interpreted, it can be the vehicle for very profound change. I think that while it is essential that environmental rights be protected by way of the Canadian Constitution, it is also important to recognize that this is not necessarily the only answer to making environmental rights part of the fundamental rights of every Canadian.

Franklin Gertler will talk in a moment about amending the Ontario Constitution, so I am not going to deal with that at all, but I do want to talk about including environmental rights in a legislated environmental bill of rights, which is something that is on the agenda of the Minister of the Environment right now. Because of the limitations of using only the charter, it is essential that an environmental bill of rights be part of a package mechanism for adopting environmental rights. What a bill of rights does is it allows for the possibility of very detailed prescriptions of environmental rights. Especially the procedural rights can be set out in great detail so that procedures and actions can be changed very dramatically, very deliberately and very quickly.

An environmental bill of rights would also apply without question to the actions of everyone affecting the environment, private actions as well as governmental actions. Having a package of constitutional protections, whether through the national Constitution or the Ontario Constitution, and a bill of rights would make sure that there would be no gap in achieving our ultimate goal of environmental sustainability.

That is the essence of what I have to say. I just would like to reiterate the recommendation that Paul made: that environmental rights should be pushed for in constitutional reform. There is no single right that is an absolute right and we are not saying the environment should always prevail over every other consideration, but adopting environmental rights will make it clear to all Canadians that environmental quality is the basis of our life, our health and our economic wellbeing and is therefore a prerequisite to a society where other fundamental civil and political rights can be enjoyed.

1050

Mr Gertler: My name is Franklin Gertler. Being an attorney from Montreal, ça ne me dérangerait pas, évidemment, de répondre aux questions en français, mais je vais faire mes remarques en anglais.

I am going to try to be brief. I do not want to make too many promises I cannot keep and I am sure I will get kicked under the table when I get to be too long-winded.

Mrs Marland: We experience the same thing.

Mr Gertler: You get kicked under the table, do you?

Mrs Marland: Right.

Mr Gertler: I am going to be dealing with some rather technical matters and I do not want to snow you under. You have our brief. If you have any questions after we have finished our presentation or at a later date, of course we would be happy to try to clarify any matter which is not entirely clear, or if there are questions from the legislative research side or counsel about any points, we would be happy to answer those.

First, I should say it is a real pleasure to be here. I am a Montreal lawyer but I am also a graduate of Osgoode Hall, so it is nice to be back in Ontario, back in Toronto and participating in local affairs.

I would like to take you first right to the end of our brief, to appendix C, which is the brief on the Canadian Environmental Law Association letterhead. Right there

you have a copy of a very brief and important piece of Alberta legislation, which is called the Constitution of Alberta Amendment Act, 1990. I have included this not because it is an environmental bill of rights, but because it illustrates that the notion of enshrining important rights and values into the Constitution of a province is not something I cooked up out of the blue which has no reality in Canadian constitutional law but in fact is a living and possible way of proceeding.

Just to give you a little bit of background—as you see, it is a very short act—what happened was that Alberta and the Metis have negotiated a very large package of legislation which creates a land base and a form of self-government for Metis settlements in Alberta. Part of that package is a thing called the Metis Settlements Land Protection Act, which provides for the protection of the lands given to the Metis settlements from alienation, from being mortgaged or expropriated, and so forth. It was a desire to see that those land rights were given constitutional protection. Because Metis rights are not adequately protected in the federal Constitution, in the charter, they saw fit to amend the Constitution of the province.

If you look at the act, the third and fourth “whereases” reflect that. This is on the second-last page of our brief.

“Whereas Her Majesty in right of Alberta has proposed the land so granted be protected by the Constitution of Canada, but until that happens it is proper that the land be protected by the Constitution of the province; and

“Whereas section 45 of the Constitution Act, 1982 empowers the Legislature of a province...to amend the Constitution of a province,” and so forth. Then you get into the body of the act.

Section 1 simply says that the Constitution of Alberta is amended.

Section 3 perhaps is the next important one, because it protects the lands against expropriation.

Section 5 is perhaps the most important one. Normally a legislature in a province has full powers over the land and resources in the province and the management and sale of public lands, and also powers over property and civil rights in the province. What has happened here, though, is that the Legislative Assembly has said, “We are adopting legislation that says, for the future, the manner and form in which we will exercise our legislative power will be limited by certain procedural guarantees so that the rights we’re protecting cannot be lightly tampered with.”

What they say is that the Legislative Assembly may not pass any bill that would amend the Metis Settlements Land Protection Act, revoke the letters patent granting the lands or dissolve the council that administers the lands without the agreement of the Metis. The parallel we would draw would be to say that the kinds of rights we are proposing to be included in the Constitution of Ontario could only be repealed or overridden by a special majority of the Legislature, so this is a way of achieving, if you like, quasi entrenchment at the provincial level.

You could say, for the future, that the rights can only be repealed or legislation which is inconsistent with environmental rights can only be passed by, for example—one could choose different numbers—a two-thirds majority of

the Legislature, or perhaps to make it even stronger, a two-thirds majority not of those present but of all the members of the Legislature. That is a way of doing something positive for environmental rights while waiting for, or in addition to, amendments at the federal level, which are more difficult to achieve, and as Marcia mentioned may also not allow for the kind of detail we are talking about here.

Perhaps another analogy which may be helpful to you is to think of human rights legislation. Maybe the best example in Canada comes out of Quebec, where we have the Quebec Charter of Rights and Freedoms, which has been described by the Supreme Court as being quasi-constitutional and which combines the elements of a bill of rights in the sense of a document that gives people rights against government and limits present and future legislation, controls that and has the effect of rendering it inoperative if it is inconsistent with the rights protected; for instance, rights to equality or rights to life, liberty and so forth.

The second element has the elements of a human rights act, which we are of course familiar with, that protects individuals primarily against the illegitimate or discriminatory actions of fellow citizens, whether it be corporations or private citizens that are discriminating in housing or discriminating in employment.

That is the kind of document we are talking about. There will be substantive rights to a healthful environment and environmental quality that bind government and impose positive obligations on government and also impose obligations on private property owners and private actors, corporate actors, to manage their resources and to take decisions in their affairs in a way which is consistent with those rights.

1100

I will just see how much more I want to tell you. I think we have shown that there is such a thing as the Constitution of Ontario. As our brief says, it is specifically mentioned in the Constitution Act, 1867, that there is a provincial Constitution. That is part V of the Constitution Act, 1867. It mostly deals with the constitution of this Legislature—the powers, the membership and so forth of this Legislature.

An example of constitutional legislation in the Ontario context is the Legislative Assembly Act, for example. But as the Alberta example demonstrates, the Constitution of the province can be more than simply statutes dealing with the length of a Legislature or how you get elected or membership and other matters of that sort.

The amendment of the Constitution of the province is entirely within the power of the Legislature here. There is no need for approval of the federal government or of any other province. I am not saying this is not a difficult area. There are potential discussions about where you would overstep the bounds. The primary limit is that the Legislature of Ontario cannot legislate any part of its Constitution which would amount to a derogation from the fundamental bargain of Confederation. You could not, for instance, increase the legislative powers of the Ontario Legislature in

areas of federal jurisdiction through what would be a purported attempt to amend the Constitution of the province.

On the other hand, it is our submission that the province can, and I think that is demonstrated by what Alberta did, legislate so as to say, "We have a certain list of powers, mostly in section 92 of the Constitution Act, 1867"—what we used to call the BNA Act—"and we are going to limit the way in which we exercise those powers so as to ensure that those powers are exercised only in conformity with certain fundamental values," in this case environmental rights. The idea is that the amendment to the Constitution can be made by ordinary legislation.

I mentioned the Legislature act and some of the other legislation in the Ontario context which is part of the Constitution of the province. What we are suggesting goes a bit beyond that. Frame the legislation so that it would actually be inserted into the Constitution Act, 1867, so that every time the federal government prints up the statutes of Canada—which includes, in an appendix, the constitutional documents of the country as a whole—everyone would see that Ontario, in its part of the federal Constitution, if you like, has taken this step and moved forward. I think that would be a positive contribution to the constitutional debate.

The nice thing about what we are here to talk about today is that it really would be a positive contribution. There has been a lot of negative talking. There has been a lot of doom and gloom. This is something that could be done that would help us say: "What really makes us Canadians? What sets us apart? What is our new agenda?" Certainly when we go abroad people talk about our record on immigration or talk about our health programs and services. Maybe the next thing Canadians can be proud of as they go abroad would be to have a real, functioning set of environmental rights that is constitutionally protected.

Of course, you will see in our brief that it has been practically the norm to have environmental rights in a Constitution. What we propose might have a little more teeth than what has been done in other places. I think there are some countries which have honoured these constitutional obligations in the breach. The eastern European countries are one example.

Just very briefly, and this gets a little bit complicated, at pages 14 and following of our brief we set out some elements of what would be a substantive right to environmental quality in the Ontario context. They are as follows.

First, the rights, as we said, would be in the Constitution of Ontario and would therefore be binding on the government of Ontario, on the municipalities which are essentially the creatures of this Legislature, on public and private corporations, and on individuals in all matters where they are within Ontario's jurisdiction. You obviously cannot, as I mentioned before, legislate on federal matters. Those provisions would be protected by, as I suggested, a repeal provision which would say that substantive rights of environmental quality could only be repealed by, say, a two-thirds majority of all the members.

The second point, and Marcia talked about this a bit—I am not going to get into details—is the question of how

you define environment. That is a nice question and it has to be done carefully.

The third thing is the right itself. What are we talking about? We are talking about a substantive right—Marcia mentioned the distinction between substantive and procedural rights—to a healthful environment. It would have to be made very clear. This is perhaps where the distinction would be drawn with some of the other Constitution's provisions we mentioned. We are not simply declaring this pious hope where everybody is lovely and we all love each other and there is apple pie and we have environmental rights. The idea would be that we are not merely declaring that this exists, but that there be a positive duty on government and on individuals to protect environmental rights.

When I say "positive duty," that is an important point, because Paul mentioned the question of a government of judges or a flood of litigation, not that we think it is a problem in any case, because what we are really talking about is a dialogue between courts and Legislature with the opportunity for the public to participate. One of the ways of avoiding any kind of inkling of an overactive judiciary is to say, "Look, these are positive, first-order duties of government, corporations and individuals which they should carry out, which they will have a constitutional obligation to carry out without waiting to be told by courts." Probably the most important way of avoiding a government of judges is to have good government to begin with.

The fourth element, and I think I have already mentioned this, would be to say that any legislation that would be inconsistent with the right, whether it be prior to the coming into force of the amendment of the Constitution or subsequent, would be made of no force and effect to the extent of the inconsistency. In the context of a non-entrenched, if you like, quasi-constitutional protection, this is what was done in the Diefenbaker Canadian Bill of Rights, which did not attract as much good and judicial interpretation as it could have, but ironically seems to be being given some new teeth by the Supreme Court of Canada now that we have a proper constitutional charter. It is not something that cannot be done. As I mentioned, the Quebec Charter of Rights has that kind of controlling, overriding provision.

The fifth point was that there be appropriate remedies so that the public could, when necessary, and we hope this would not be necessary that often, go to court to get injunctions to get other remedies to enforce the right.

The final thing, and I hope no one jumps out of his seat, is the idea of having some kind of "notwithstanding" clause which said the right could only be repealed by a special majority of the Legislature and that the right would override other kinds of legislation, would have a controlling effect on other legislation, but that there may be circumstances where, short of repealing the rights, you want to set them aside.

I can think of one example. It would be where you are trying to cite a hazardous waste facility, for example, and that will surely at least have some potential danger for the local environment. We do not want to place the government in the situation of having its hands entirely tied and

unable to go about some environmental management activities because of absolute environmental rights. Ultimately the Legislature has to bear a good bit of this responsibility and therefore we propose some kind of possibility of a legislative override or "notwithstanding" clause, but that would require, again, a special majority and would be renewable, would have a sunset clause that there would have to be ongoing evaluation of whether the derogation from environmental rights is justified. That gives a kind of political accountability.

Those are my essential points. I hope I have not bombarded you too much. I would be happy to answer any questions you have. I am also very interested in some of the things Toby is going to talk about, the division of powers. I have an abiding interest in that too, so maybe we will all get our oar in.

1110

Ms Vigod: I am going to conclude with some discussion on the thorny issue of division of powers and the role of federal and provincial governments in a new Constitution. I think everybody is well aware that the Constitution Act, 1867, did not allocate legislative responsibility for the environment to either level of government. The environment was not a major concern back then, and as a result we have had a large degree of overlapping jurisdiction because of the generality of federal and provincial powers.

This has led to some very practical problems in the environmental field. Often when there are decisions as to which level of government has the responsibility, these decisions are very difficult. We have often had the case where one level of the government declines to take responsibility and what I always call jurisdictional buck passing takes place. A famous example in the 1970s was the failure of either the federal or provincial government to take steps to close the English-Wabigoon River to sport fishing in the face of high mercury levels. I remember that debate very well, and the buck passing was at an extraordinary level.

As well, we have had situations where constitutional issues arise in the environmental field as to which level of government should legislate in respect of an emerging issue; for example, biotechnology. The question is always, is it the feds or the provinces that should legislate? Cleanup of hazardous waste sites: I know the debate on whether Canada should have superfund legislation to deal with abandoned sites has been a controversial one, and constitutional issues have been raised in that context.

Finally constitutional challenges have often been raised by polluters in a number of situations when faced with environmental charges under either federal or provincial law. This has proven to be very time-consuming. I know certainly in the early days when we had our Ontario Environmental Protection Act there was a challenge that went through the courts. It is interesting that there were arguments it was ultra vires the provincial Legislature because pollution was a national concern, and of course we have seen companies challenge federal law, the Clean Air Act being one recent example, where they have said, "No, air pollution is a provincial matter."

I guess the most recent important case was the Crown Zellerbach case, which took eight years to wend its way up to the Supreme Court. That case involved a challenge to the provisions of the Ocean Dumping Control Act by Crown Zellerbach, and ultimately the provisions were upheld and the Supreme Court found that at least marine pollution was a matter of national concern that could be upheld under the "peace, order and good government" clause. But I think we have all come to a conclusion that there is some need to clarify the situation with respect to the constitutional division of powers. It is very time-consuming and resource-consuming to have to go through these eight years of court proceedings to find out where we all stand.

Our organization, CELA, and, I think, a number of other commentators and environmental groups have taken the position that there is a role for all levels of government to play in environmental protection. We have certainly also argued, though, that there is a very important role for the federal government to take. First of all, we know that air and water pollution do not respect provincial boundaries. We also see that there is a need for national standards and a centralized authority to ensure that pollution havens are not created—I think this is a real concern—as well as a need for some national enforcement standards. We have a patchwork of enforcement across this country. As well, there are federal resources and federal research capabilities that can be brought to bear.

We do not support the recommendation of the Allaire report that environment be an area of exclusive Quebec authority, the position it took, nor do we support the Group of 22's recommendation that environment be a provincial responsibility, except for, I believe, they have used the terms "international" and "interprovincial air and water flow standards." I am not quite sure what that means. It is very narrow definition. As well, the Group of 22 has recommended that common minimum legally enforceable provincial standards be established by provinces and monitored by an agency under the supervision of the House of the Federation. If I have heard of one oxymoron, it is "common provincial standards." I think that is highly unworkable and a position we would not advocate. I think it really also takes away from the discussion we have been having about the fundamental value of environmental protection.

Our recommendation is that there be concurrent jurisdiction, with federal paramountcy. When we look at our existing Constitution, there are areas of concurrency that have been recognized, areas of agriculture, immigration, old age pensions. As well, certainly in the environmental field, we have a developing concept of functional concurrency where we may have a single subject matter of legislation that has both federal and provincial aspects that can be dealt with by both levels of government; for example, water pollution. In Ontario we have the Ontario Water Resources Act, and as well there is the federal Fisheries Act.

While this has been a developing theory, and certainly the theory also includes the fact that federal law would be paramount in the event of conflict or inconsistency, there

have been cases that have left sort of a lacuna or a gap in the coverage of federal-provincial law, and that is why we say we really need a clarification of this type of regime.

On page 19 of our brief we have recommended some language. It is of course subject to debate and further discussion, but our recommendation is—we would urge the committee to make such a recommendation—that the federal Constitution be amended to include a clause that both the Parliament of Canada and provincial legislatures may make laws in relation to environmental protection and resource conservation and that in the event of any conflict, the federal legislation shall prevail to the extent of the conflict.

I think the courts have been very wary to find conflict in legislation, the example of water pollution and air pollution being areas where they found the legislation can exist at both levels.

The other area or gap that we have identified is the whole issue of the immunity of federal agencies and departments from provincial law. I think people might be aware that a number of years ago there was a prosecution of Eldorado Nuclear Ltd under the Ontario Water Resources Act that ultimately resulted in charges being dismissed because the courts found that Eldorado was a federal crown agency and not subject to provincial laws.

We have recommended that this committee recommend that the Constitution be amended to provide that federal government agencies and enterprises be subject to provincial and municipal laws, except to the extent that they are specifically granted immunity by federal legislation. In other words, the general rule should be that provincial law does apply to these agencies.

The Brundtland commission that we have heard talk about has also recommended a clear role for national governments in the establishment of clear environmental goals and laws. Their recommendation is that there should be a strong role for the federal level, with local governments being empowered to exceed but not to lower national norms. I think Ontario has the leadership role in this area and certainly we have seen this used effectively. Our transportation of dangerous goods law is an example of federal legislation where the provinces have their own legislation that can also be more stringent.

In conclusion, what we have tried to bring forward is the position that we feel environment is a fundamental value that should be protected in the Constitution, that we think there are a number of rights and a number of ways of framing these rights. We are urging this committee to recommend that the federal government give consideration to entrenching environmental rights in the new Constitution.

Franklin has talked about the opportunity for Ontario to take a creative role in amending its own Constitution in this right and setting a leadership role, and we have talked about the need to clarify the division of powers but to ensure that there is a strong federal presence because of the nature of the environmental crisis we face, but also that there be a strong provincial role and the opportunity for the provinces to act and take a more stringent role.

There is certainly a lot of room for discussion here and we would like to entertain any questions you have.

1120

The Acting Chair: First of all, I would like to thank you very much for your very good presentation. There are many issues that you have put out on the table for us to respond to and we have a number of people who are interested in doing so. I would like to begin with Mrs O'Neill.

Mrs Y. O'Neill: This is a very detailed report. There certainly has been a lot of experience brought to us today.

Ms Valiante brushed over this and someone else in your group made reference to it quickly, but I think it is really important that we understand what you mean when you say "environment includes," and particularly the areas I would like you to talk to are the social and cultural aspects. You must have thought about that or it would not be here. What does it mean?

Ms Valiante: You can go with a broad view of social and cultural aspects of the environment, or you can take a fairly narrow view. In Ontario legislation, in the Environmental Assessment Act, the definition of "environment" includes social, economic and cultural rights as well as the built environment.

The social environment, within the framework of the Environmental Assessment Act, includes things like recreational values and aesthetic values. It is more than just physical environment. It can go as far as including rights to employment. Certainly at the international level, in the international covenant on economic, social and cultural rights there are a lot of rights, to health, to food. Those kinds of things would come under the rubric of social and cultural. Cultural would include the rights of aboriginal people to their culture.

I do not necessarily have one definition that I want you to adopt. I think the importance of including it is to say that health includes mental health as well as physical health. I am not being poisoned, but it should be an environment that allows me to develop to my potential.

Mrs Y. O'Neill: This is much easier expressed than even put into legislation or recommendations, as I am sure you can well appreciate. It overrides so many other jurisdictions and even within our own format of ministries it certainly is a very challenging concept.

Ms Vigod: Could I just add one point on your question? In our brief we discuss this on page 14, and I think what we are saying is, the stronger, in some way, that the right becomes, there has to be balance with a definition that may have to be circumscribed enough that it is practically applicable. In other words, we focus on the ecosystem integrity and the natural environment, because otherwise we would be talking about everything under the sun. I think in our concept, the stronger you make the right, the definition would have to be perhaps narrower.

Mrs Y. O'Neill: I thank you for bringing before us all that has been done internationally and the inclusion of those clauses is most helpful. I wonder if you could tell us a little bit about the implementation successes.

In discussing the social rights, for instance, we have looked at some of the difficulties of including social rights in constitutions, whether that be implications for the judiciary or implications just in setting standards in enforce-

ment. Certainly the European Community has come across some of those hurdles. I am wondering if you can bring us up to date or give us some examples from the other jurisdictions' implementations of the clauses that you have quoted.

Mr Muldoon: I am just trying to think of what are good measures of success. I think there are different ways of looking at it.

In the United States, various states have constitutional guarantees for it. One of them is Pennsylvania, which does not have a rights legislation per se but does have a constitutional guarantee of environmental quality. Minnesota and Michigan are other good examples. The measure of success there—it probably is difficult to show whether or not their environments are any cleaner. What is clear is that the citizens have better access to the institutions which decide on environmental quality. What happens is that those institutions—the tribunals, the court, the bureaucracy—recognize that everyone has a stake in the environment and therefore must have some input in some fashion.

Mrs Y. O'Neill: Could you say what the instruments are that give them access?

Mr Muldoon: They range; everything from freedom to information to standing in courts to enforcement rights. They do change from jurisdiction to jurisdiction based upon the legal and social culture of that particular jurisdiction. There is no magic formula and there is no model which I think is completely adaptable to the Ontario or Canadian experience. But certainly the idea is that there are certain principles which it furthers: access to the courts, fair and equitable decisions, those kinds of principles. I think there are a lot of jurisdictions which have measurable success in that realm, but again there is no transferable model. I think that in Ontario and in Canada, it has to be home-grown in light of our social and legal fabric and history.

Mrs Y. O'Neill: I was surprised to see several Third World countries listed. Could you tell me why that happened or how that happened? Is it the infancy of their governments, getting in on the ground floor, so to speak?

Mr Muldoon: I think there are a lot of reasons. It is very hard to generalize, putting Third World countries in any sort of typology. One of the reasons you suggested is, I think, obviously the most important, and that is the fact that they have had an opportunity to look at their constitutions fairly recently. As Franklin mentioned, I think it is now the norm rather than the exception that these types of rights are included in constitutions. If you look at some of them, for instance, you will notice that they have very broad rights which then have to be implemented through domestic legislation. Certainly that is where the weakness has been. It has not been a failure of the concepts; it has been a failure of the implementation. I think that is probably understandable. But what is clear is that, first of all, that allows a framework for development in terms of implementation down the road. It also contributes to the overall notion that maybe this is an emerging facet of international law, an emerging norm of international law.

What is interesting is that I think Canada missed the opportunity in the early 1980s, when we did look at the charter, to include these kinds of rights. I know many environmental groups and environmentalists are now scratching their heads and saying, "Is there a way to include the environment, and how do you do it?" This is why, when the opportunity is now before us, we are quite eager to look at it. We hope we do not miss that again.

1130

Mrs Marland: First of all, I would like to congratulate you. I think this is a very exciting presentation that you bring to this committee this morning. I am not a regular member of this committee, although I have enjoyed the opportunity of being substituted in for this week. But your contribution, the aspect from which you come, is in my opinion very important and very vital. I do congratulate you very sincerely both on the expanse and the thoroughness of what you have been telling us this morning.

Interesting, is it not, when you think about our 1867 beginning? I think, Toby, you referred to the fact that nobody was thinking about the environment then, nor in the 100-plus years since, while we have been destroying it in many senses. I think the fact that you are here today and the fact that your brief is realistic says a lot about where the public is today in dealing with this subject and in dealing with the future of the country with this subject.

It is interesting to look at the list of the 18 countries you have in the brief that have in their constitutions, in different wording, protected the environment. It is also interesting if you think about 18 countries as being perhaps 5% of the countries in the world. I also found it interesting that it is almost 40 years since Poland enshrined the protection of the environment for its people and that all the other countries are only in the last 20 years. We can only hope that other countries make the same kind of progress.

There are two things I want to ask you particularly, and I am speaking as a 20-year environmentalist who was an environmentalist before it was fashionable to be one. That word was not even used in the late 1960s.

When we talk about air and water and we look at the jurisdictional challenge that air and water provide, do you agree that this has to become totally a federal government responsibility? What I want to suggest to you is that when it breaks down to a provincial jurisdiction, first of all, we end up as a nation—everybody does not get protected because the standards are going to be different from province to province. Am I going to live in the province that has the strongest ability to enforce the protection because of funding? If I live in a wealthy province, are my water and air going to be better protected because we have more money to do that, or can we look at it being totally a federal jurisdiction and therefore a federally funded enforcement? It is no good putting it in there if it is not going to be enforced.

Ms Vigod: As a general comment, environmental protection really does not lend itself to being the total purview of one level of government or the other. We would take the position that it should not be totally a federal responsibility, in the sense that there certainly are local pollution

problems that should be dealt with at a local level. The people are closer to the environmental problems. We do not see it totally being a function of the central government to look after air and water pollution.

On the other hand, there are the transboundary aspects of it. I think the need to be able to set national minimum standards is the key role for a central agency, whereas I think the province has a role in dealing with pollution, certainly within its boundaries, and also in saying, "We know the watershed or airshed in our province and want to enforce a more stringent role." I guess that is why we keep coming back to some sort of concurrent jurisdiction.

What we have seen at the federal level right now is in some ways an abdication of some of the responsibility to take that leadership role. That is why we would like it spelled out more clearly in any new Constitution. It is very hard, because environmental protection covers so many aspects of our lives, to put it into one level or another. The concern is that while we do see a role for the federal government in setting minimum standards, there be certainly a provincial role as well.

Mr Muldoon: I just want to add something. One of the themes I think we are trying to get across is that it is concurrent jurisdiction. It has to be by the way the environment works and the way political institutions work. But what we are desperately in need of is clarification of who has power to do what. With clarification comes something which we think is vitally lacking, which is accountability.

Toby mentioned this whole notion of buck passing. I think if you look at the Great Lakes, there is a tremendous amount of that. The federal government blames the United States, the United States blames the International Joint Commission, the International Joint Commission—it just goes around and around. The basis of that is that the diversity of jurisdictions means diversity of roles, means unclarity of who has what roles, and then we end up with everybody pointing the finger at someone else for the environment degrading.

Because we did not get the opportunity to do it a hundred and some odd years ago, we have to clarify who has what role so that we can make people accountable, make government and bureaucracy accountable for their action or inaction. I think that is a very important theme we are trying to get across, rather than saying it is one jurisdiction or the other.

Mrs Marland: It is very depressing, is it not, with these international commissions that sit down annually and discuss the same thing they have discussed for the last 15 years, and no progress has been made.

Mr Gertler: I think in answering the question of division of powers, one obviously has to be quite practical. For instance, a problem between Windsor and Quebec City, what we call the Windsor-Quebec City corridor, is ground-level ozone levels. These are caused by, among other things, emissions of nitrous oxides. I have clients in the Eastern Townships near Montreal who are in the business of rubber-coating fabric, and that puts volatile organic materials up the stack. They have to comply. They are in the

process of putting in a \$1-million solvent recovery system to keep those things from going up the stack.

Probably the appropriate way to approach that problem is to say, "Yes, this is a problem which affects the airshed"—if you will permit that term—"of both Ontario and Quebec, and there should be national standards." That does not mean that in the negotiation of when the system should be installed and the schedule and whether they are actually complying, Quebec should not be involved. So we really have to have a practical approach to these problems, it seems to me.

Maybe the overarching principle should be that the environment is for people and the Constitution is for people. It is not so governments can feel better and say, "Oh, yes, we have more legislation than you do," or look better. The real measure of where these powers should lie and how we should divide them is how well they protect the population, how well they protect the environment. I think our submission—and maybe we distinguish ourselves from the witness who preceded us—is that Canada is more than a common economic space. It is also a common environmental space and it is our home, and those are some of the values that should govern the division of powers.

Mrs Marland: Has your organization, the Canadian Environmental Law Association, been consulted? I am looking at you, Toby, as executive director. Have you been involved in the formulation of the Ontario bill of rights?

Ms Vigod: Everybody at this table has been involved. The need for an environmental bill of rights was one of our founding principles back in 1970, 20 years ago, and it has taken a long time to get where we are now. We certainly see the environmental bill of rights being an important tool. Again, each one of these aspects is not a total panacea, but it is certainly an important tool in giving citizens access to decision-making, to the courts, and in raising the consciousness about environment protection. It is the same for the need for a constitutional amendment. It is another tool. It again enshrines it as an important value. We think all these things can work together. So it is not an either/or situation.

At this point in time we are talking about new constitutional arrangements. Now is the time to ensure the environment is part of that. The bill of rights, as Marcia was saying, can include many more specific provisions on procedural rights, access to the day-to-day decision-making. Another option is also having a federal environmental bill of rights, which we have put forward in the past. Ontario can again take the lead, but certainly having those kinds of rights enshrined in a federal statute is also an important option.

Mrs Marland: Did you make your presentation to Spicer or the other federal commission?

Ms Vigod: Not to Spicer. We will obviously be sending our brief around to some of these other commissions.

Mrs Marland: At this point you have not made your presentation to a federal commission on Confederation?

Ms Vigod: No, except that CELA did make a brief back in 1978 to the committee looking at what was then

Bill C-60. Some of it is déjà vu, but we certainly intend to enter into the debate at the federal level.

1140

Ms Valiante: Can I make a comment on the division of powers as well?

The Acting Chair: If you could do it very quickly, the reason being that we have quite a long list of questioners.

Ms Valiante: Okay, I will make it quick. One of the things we have come to in understanding the environment and one of the reasons environment was not included in 1867 is that we now see that the environment affects so much of our lives. The work of the Brundtland commission reinforces this, that environment touches on the economy, on health and all kinds of things. To say the environment should be provincial or federal really is a complete misunderstanding of what is included in the idea of environment.

When you are talking about resources you are talking about air and water, which you were talking about, but it is not limited to just air and water quality. To try to divide it up or give the whole package to one level of government gives a lot more than air and water quality. I think the Crown Zellerbach case made that clear.

Mrs Marland: I was not suggesting that.

Ms Valiante: I am not saying you are suggesting that, but in terms of a recommendation, in terms of an understanding of what division of powers is all about, I think the only practical way of dealing with it is at both the provincial and the federal levels.

Mr Winner: When Marcia was canvassing the various options for protecting environmental rights such as the Constitution, the charter or the environmental bill of rights, I was reminded of a presentation by the Advocacy Resource Centre for the Handicapped only a few days ago. Their approach was this: If we enshrine these principles in a charter, then they will be subject to the section 1 override and the section 33 opting-out clause.

We also had a presentation by Anne Bayefsky who suggested, because of the abysmal record of provincial governments opting out on some very vital issues, that we had to have real teeth in our Constitution when it came, in that case, to protecting social and economic rights. You were providing your own opting-out clause. I was quite surprised because I wondered how effective these proposals can be when any provincial government can find some rational basis for justifying an override or an opting out.

Mr Gertler: First of all, if we are talking about reforming the federal Constitution and you are of the view—I do not say it is not a legitimate view; some days I share it—that section 1 and section 33 are something to get alarmed about in the Constitution, there is the option of protecting these rights, as Marcia mentioned, in a separate part of the federal Constitution that is not subject to section 1, limits that are deemed justifiable, or to section 33, the "notwithstanding" clause. A good example of that is section 35, aboriginal rights in the Constitution, which is not subject to either of those limits. That is an option.

The question of an override: We mention it; we throw it out. Maybe you would want to put it in the waste-basket in terms of an amendment to the Constitution of Ontario, but you will notice it was suggested that it be only with a two-thirds majority of all the members of the Legislature. You are talking about a very tough standard, because the "notwithstanding" clause that now stands in the Canadian Charter of Rights and Freedoms operates by simple majority of those present, which is a much lower standard. That may be a basis for distinction.

Mr Winner: It is certainly a debatable issue. Thanks for your observations.

The Vice-Chair: I will leave it to the discretion of the committee. We have gone overtime, but there are two questions. If we deal with them quickly, is it the will of the committee? Okay.

Mrs Marland: If there are other questioners, I think that is fair.

Mr Harnick: Toby, you have talked about the environmental bill of rights and the development of a new cause of action in regard to lawsuits or potential lawsuits between private individuals. What do you envision as that cause of action containing?

Ms Vigod: I will give you this one.

Mr Muldoon: I think there are three distinct problems and we do not have a set answer. The first traditional problem with the cause of action is that we have never been able to invoke it because we do not have standing to sue. In other words, there are historical barriers. Unless my property or my health is being affected, I cannot sue or enforce laws for the sake of the environment. I have to show personal, proprietary or pecuniary problems.

That is usually the first problem when you talk of the guise of cause of action. We do not really get the cause of action because I am not even in the courtroom yet. I am still banging on the door. If we deal with that problem and we are in the door, then we are at the cause of action problem.

Then there are two other issues. The first question is, does a present common law or a tort law allow people—does it protect the environment? in other words, are the traditional causes of action—nuisance, trespass, negligence—sufficient to allow people, victims of pollution, victims of environmental degradation to do it adequately, conveniently and equitably? The answer is that we are not sure. We have not done it enough, in a way, but we do know there are some real problems. There are problems of causation, problems of trying to fit these environmental problems in these historic, many times antiquated causes of trespass, which has its own little rules, and nuisance has its own little rules and negligence has its own little rules, especially when dealing with things like toxic chemicals where the injury may be a decade or two decades after the actual event.

There is that whole problem and of course the remedies: monetary, injunctive and all that. Once in the courtroom door we have to ask, is it sufficient? That is why the cause of action issue has become quite interesting. Should we then go through years and years of trying to figure out

whether or not the present cause of action is sufficient, or should we create a new one to deal with the kinds of problems we foresee so that the rules are clear and we can just simply tell everyone what the rules of the game are, make them predictable, make them fair and effective to protect the environment and compensate those affected by environmental degradation? We do not have the wording but those are the principles underlying it.

Mr Harnick: Does the proposed class action legislation go far enough to provide you with the standing you need in terms of prosecuting a civil action?

Ms Vigod: It is really almost one of these chicken and egg problems. You need reform to the law of standing almost before you reform class actions, because the class action bill deals with the opportunity for many victims to bring a lawsuit together. It is a much-needed reform. Certainly we support the class action bill, but it does not deal with the issue of standing. In other words, if I am barred from the court it is not going to help that I can bring 10 people along with me.

We have always said you almost need the reform in the standing before you do class actions. We are now sort of getting up to speed with both aspects of reform to the law. The class action thing really just deals with the opportunity to bring in a number of people and deal with it efficiently and effectively that way.

Mr Harnick: That is interesting. We have seen the draft class action bill and we hear that the environmental bill of rights is on the horizon. We have not seen anything regarding standing but I suspect we may.

Ms Vigod: Paul and I are both on the advisory committee on the law of standing. Certainly our deliberations have concluded and there will be something soon on that.

1150

Ms Carter: I also would like to thank you for bringing this brief. I cannot think of any subject which is more important and more vital for all of us. Some of the most pressing environmental problems are things that happen on a global scale, such as global warming and the thinning of the ozone layer. It is hard to pinpoint those and give them some kind of local base. I am just wondering how we could look towards solving those problems right from where we are.

Ms Vigod: I guess that is another reason why we need all levels of government involved, because it is of course the "think globally, act locally." We have to look at all levels. Again, we cannot pass the buck up to the international level, which has sometimes been done and say: "We can't act. We're paralysed because it can only be done internationally." That certainly is a clear role the federal government should be taking an aggressive role in, pushing an international environmental agenda, which we have not seen happen.

In global warming, as you well know, there is a lot of scope for provincial and local governments to take initiatives. We know what the causes are. We know we have to start reducing emissions at all levels of government. We cannot pass the buck up even further. Certainly in Ontario

and Canada it is an opportunity to take a role, live up to our rhetoric and put our action where our rhetoric is.

Ms Carter: The causes are so bound up in the way we live, for example, the use of cars. It is not just the carbon dioxide from the use of gasoline, it is the CFCs in the air-conditioning and so on. It is hard to see how we are going to act collectively to really change this.

Mr Gertler: You are asking the cosmic questions, obviously, and it is difficult for us to give much of an answer. We should not assume to be able to answer all these things. I think the importance of what we are talking about is that if we are going to start to change on these issues down the road, we have to decide these are fundamental values, that these are the essential things for which our society exists: the protection of the environment. Once you have done that, it may be easier to build a social consensus to take action on specific problems which would otherwise seem unthinkable. It is a question of getting on a war footing, essentially.

Ms Carter: So would you need a kind of lead?

Mr Gertler: Rallying.

Ms Carter: Rallying, yes.

Mr Gertler: The other thing is that by enshrining these things at the Canadian level, we may also push our federal government to be very active. We have the 1992 United Nations conference on environment and development coming up, which will be addressing exactly many of those global issues. It is 20 years since the Stockholm conference. If Canada has taken a strong environmental rights stand, we may go there with a stronger hand and more conviction to address those issues at the global level, and also with cleaner hands. We will not be living in a glass house.

Mr Muldoon: I just want to mention that in working for a public interest group, we do not find a lot of cosmic responses to those cosmic questions. They are very difficult. In our view, experience has been much further ahead and making those very difficult lifestyle decisions and changing consumer habits and doing all kinds of things unimaginable even five years ago.

The question then is, if that is the answer, if those kinds of very fundamental but easy things ultimately are the answer, how are we going to change our regulatory and administrative systems to facilitate and promote them? We think environmental rights are the key element of that. I guess we are frustrated. The top-down approach has not really worked to change the environment. Let us try bottom-up.

The Acting Chair: Thank you very much for responding to the questions the members of the committee have had. Do you have a brief final word you would like to say to the committee before we end this part?

Ms Vigod: We certainly think this is a real opportunity; this is the time. We are looking at a new Constitution. As Franklin said, putting environmental rights in is a very positive message that can come out of this committee, as well as the leadership role Ontario can continue to take. We really urge you to examine our briefs and develop some recommendations. We thank you very much for setting this up panel.

The Acting Chair: Thank you very much, and be assured we will be looking through the brief very carefully.

I just say to the committee that at this point we are pretty well ready to move into the subcommittee, which will be in room 230. We will adjourn until 2 o'clock on Monday.

The committee adjourned at 1157.

CONTENTS

Thursday 15 August 1991

André Raynauld	C-1387
Canadian Environmental Law Association	C-1391
Adjournment	C-1403

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

Chair: Silipo, Tony (Dovercourt NDP)

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Table of Contents

Table of Contents for proceedings reported in this issue appears at the back, together with a list of committee members and other members taking part.

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Table des matières

La table des matières des séances rapportées dans ce numéro se trouve à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et des autres députés ayant participé.

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au (416) 325-7400.

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

Monday 19 August 1991

The committee met at 1405 in room 151.

The Acting Chair: I would like to bring the committee to order. First of all, welcome to all the people who are watching the committee in its deliberations from all across Ontario. We are glad to have you watch and listen to the deputants today.

ANISHINABEK NATION

The Acting Chair: To our guests who have come here, Joe Miskokomon and Bob Watts, thank you for coming before us today. I wonder if you would introduce yourselves for the record and also indicate the group you are representing today.

Mr Miskokomon: My name is Joe Miskokomon. I am the grand council chief of the Anishinabek Nation.

Mr Watts: My name is Bob Watts. I am the executive director of the Union of Ontario Indians.

The Acting Chair: I know we have communicated with you. You know you have an hour for your presentation. I hope you will leave a certain portion of that open for questions and answers near the end. With that, please start your deputation.

Mr Miskokomon: The Anishinabek Nation, represented by the Union of Ontario Indians, is a confederation of 43 first nations whose homelands, in Canada, stretch from Windsor to the Ottawa Valley. Our people number some 35,000 and are members of the Chippewa, Ojibway, Adawa, Delaware, Pottawatomi and Algonquin Nations.

In 1989, prior to the Constitution Act, 1982, the subsequent first ministers' conferences and the proposed 1987 amendment, our chiefs and elders in the assembly stated: "We are a distinct people. We have a distinct territory and our own lands. We have our own laws, languages and forms of government. We survive as nations today."

As nations we have never surrendered our aboriginal rights, including the jurisdiction over our ancestral lands, nor have we surrendered our ability to pass laws with which to govern our people. As nations we made the decision to negotiate military alliances with the British crown that resulted in successful retention against the United States of the lands now known as Ontario. Later, the Anishinabek, acting in the capacity of self-governing nations, signed 44 treaties with the crown which delineated specific obligations to our people. In making these treaties with your forefathers, the crown formalized its recognition of our sovereignty.

Mr Chairman, members of the select committee, I would like to thank you for the invitation to appear here today on behalf of the Anishinabek people. It is clear to me that we all have a great deal of work to do in order to keep this country together. There are undeniably many issues

that the settler governments must deal with among themselves. I am here today to state once again that no system of government will operate successfully in this land until the aboriginal inhabitants of this land are dealt with justly. This is not mere rhetoric. The fact is our governments, our laws, our languages, our spiritual teachings and our people are part of this land. This land is the basis of our existence. Our laws are for the protection and the preservation of the land. We are inseparable.

1410

Once again we are asked to try to explain our way of life in terms of our institutions. This is no easy task. However, I will attempt, without violating our principles, to lay before you today our agenda. You must understand at the outset that I believe, irrespective of what happens in this round of constitutional talks or the next, in order for this country to grow in unity, the Anishinabek Nation and the other aboriginal nations must be recognized and accepted into the Confederation of Canada on mutually acceptable terms.

It is clear that in order to ensure meaningful participation of aboriginal people in the constitutional reform, our representatives should be involved in any discussions that directly affect us. Our ability to propose constitutional amendments must be a precondition to participation.

When we address the issues of entrenchment of the inherent rights of self-government, it is clear that the amendment must be worded by us. We do not believe that the government, or any combination of settler governments, has the right to approve our inherent right of self-government. We believe rather that a recognition process would be more appropriate.

The obvious question as to what the amendment would look like arises. I suppose it could be a short statement of principle that would be worked out through negotiation or through court battles, or we could entrench an exhaustive amendment, which would be misinterpreted and would lead us to lengthy court battles at any rate.

We believe the right to self-government is already in section 35, however, we would all understandably feel more comfortable once this is spelled out. The Supreme Court has given some guidance as to how to deal with subsection 35(1). It is clear that the province has no power to effect subsection 35(1) rights and that the federal government can only do so in very specific circumstances. The infringement must be "reasonable, necessary and compelling and substantial." Even if a legislative objective is found valid, the justification of infringement must consider whether the federal government has "pursued the objective in a manner which upholds the honour of the crown."

The process thus begins to examine some of the how-tos arising out of an entrenched right to self-government.

Our right to make laws dealing with internal matters should be understood. These range from citizenship, land, resources, health, education and other aspects of governance or, to use the phrase of the US, "internal sovereignty."

Remedies would, as a necessity, need to be put in place to deal with the conflicts and misunderstandings that would arise, as they do when two governments or more attempt to work and live together. Dispute resolution forums can be built into any government-to-government or nation-to-nation arrangements, and we believe laws which are considered *ultra vires* could be referred to the Supreme Court for its ruling.

The question as to whether 91(24) of the Constitution should stay or go is a complex one. Certainly we believe that the federal government should not have the ability to make laws for and about Indians and lands reserved for Indians. However, there is both the fiduciary and a treaty obligation for the crown to provide certain services, moneys and land to Indian people. Whether or not the provincial crown shares in this responsibility is unclear. It does seem clear, however, that the province has a responsibility to provide services to Indian people, irrespective of residence, that are available to other people in Ontario.

Arrangements will need to be entered into to ensure treaty and fiduciary obligations are maintained and that the appropriate support is given to aboriginal governments. The answer as to whether or not a third or first aboriginal order of government should be recognized in the Constitution is obvious. The answer is emphatically yes. By saying this, we do not accept the notion that third is somehow less or last.

You must understand that aboriginal nations that choose to enter Confederation have their own forms and levels of government. We have our own laws concerning jurisdiction and relations. How we relate to the other levels of government will be negotiated. The Constitution should not make our governments junior or senior. We are different and separate orders of government.

Last year when we made our presentation on the Meech Lake accord, we said that constitutionalizing the notion of two founding nations was a constitutional myth. Today we say the notion of constitutionalizing three founding nations is also a myth. There are some 50 aboriginal nations in Canada, and many of our people live in what is now known as the United States.

It must be recognized that there is no one Indian nation. We are many nations with profound differences in terms of language, custom, cultures, laws and territory. A Canada clause must be constructed in a manner which recognizes aboriginal nations and peoples as a distinctive and fundamental characteristic in the founding and development of Canada.

In the guidelines the committee sent, you asked if section 35 and subsection 35(1) of the charter should be changed. The question is a tricky one, considering that there is no section 35 or 35(1) of the charter. However, sections 35 and 35(1) of the Constitution should be changed. Take the word "existing" out of section 35. Even if the word is meaningless, it is an insult and drags along a lot of unnecessary political baggage. The right to aborigi-

nal government should be explicit. As we said before, clauses 35(1)(a) and (b) should be amended to ensure that aboriginal peoples are represented at the constitutional table as a right and with decision-making capacity.

Aboriginal representatives in the House of Commons and the Senate: This boils down to a question of priority. Our priority now is to have our inherent right to self-government entrenched in the Constitution. At that time the need for aboriginal electoral districts will be determined based on the success of our relationships with the federal and the provincial governments. An alternative that we would put forward is to allow our nations to select individuals, through our own processes, to sit in the House and enter into debates on matters which affect us. These individuals could also sit on the committees and have staff and access to research facilities but would not be members of parliament. In the event of Senate reform, aboriginal senators would be desirable to ensure a linkage between our nations and oversee and scrutinize federal initiatives.

In Canada there are some 53 distinct aboriginal languages. These languages require more than just some mention in the Constitution. I believe that our languages should be recognized as a fundamental characteristic of Canada in the Canada clause. However, efforts must be made to preserve the languages and culture that are distinct to Canada. When entrenching languages, we must also take into account the numerous sacred places and burial sites and the need to return sacred objects from museums to the appropriate keepers of these objects. Our languages and cultures are unique to Canada. Canada should celebrate this and make every effort to protect and enhance this, not pretend it does not exist.

I will repeat here for the record a statement we made last year to the select committee on Meech Lake, "Aboriginal societies and languages are distinct and are part of the fundamental characteristics of Canada." Indeed, they are distinct not only in Canada, but in all the world. The Constitution of Canada should celebrate this fact and recognize that aboriginal governments, languages and cultures are not the stuff of museums and history books; they are vibrant, alive and thriving despite all efforts to exterminate, assimilate and negotiate us out of existence. This is our home and native land. Do not pretend that the glory of this country is due solely to immigration. The great tragedy is that we suffered, sacrificed and shared to help make this country what it is and yet we, the original inhabitants, are the most destitute in Canada.

1420

We have before us an opportunity to make the Confederation of Canada truly representative of the political and social realities present within Canada. Ontario can and must assume the leadership role that is so greatly needed in Canada. Together we can accomplish what 124 years of Confederation have ignored. We have a responsibility to those who have gone before us, and to those generations yet to come, to strike a harmonious relationship and build a firm foundation for Canada into the 21st century.

Mr Malkowski: Thank you for your very impressive presentation. That information has been very helpful.

Would you mind elaborating on some things in terms of the Canada clause and where the native people would fit in that, in terms of recommendations? You said you did not want to have Canada ignore native people again. Could you talk a little bit about that and how that would fit?

Mr Miskokomon: I will refer this to Mr Watts.

Mr Watts: What we are saying in respect of the Canada clause is that in the last round of constitutional discussions, when we were discussing Meech Lake, there was a notion that somehow or another the Canada clause could talk about the duality that is Canada; that is, French and English. When we made our presentation, we said that would be constitutionalizing a myth, that there is more to Canada than a French and English duality.

What we are recommending is that a clause be inserted that recognizes the aboriginal distinct characteristics of Canada, being that there are some 50 indigenous or aboriginal nations in Canada that have made a contribution to Canada and each makes up some of that distinct characteristic that is Canada. These nations are found nowhere else in the world, and a clause that talks about what Canada is should celebrate that fact.

Mr Malkowski: Okay. Maybe I could clarify my question a little bit more. Would you mind now commenting again about last Friday's decision, the court decision, about getting the word "distinct" and how well that would fit in with the Canada clause? What do you think about that, and going to court to force the federal government to—

Mr Miskokomon: In terms of going to court, what we have is a political problem. We have a problem that cannot be resolved in court. If we attempt to take it to court, there are no laws that help the court in this way, so the courts are then faced with the problem of attempting to give legal interpretation to a political misdirection.

We think cases that are going to be put forward should look at existing laws, to try to build new politics through the courts. In Canada the Supreme Court is not as adventurous as it is in the United States, so we face big problems doing that, and that is not even considering the financial burden that goes with it. Many lawyers make a lot of money and we end up resolving very little politically.

Mr Malkowski: Okay, that clarifies it, thank you.

Mr Curling: I too would like to thank you for your presentation. Each time a presentation is made here, especially from the aboriginal people, it comes more to the forefront how important it is that we have an inclusive Constitution, not an exclusive Constitution, and how easy it is at times, I feel, that some people may be excluded from the constitutional process.

One of the parts that jumped out while you were speaking was when you talked about the need for the aboriginal electoral district that "will be determined based on the success of our relationships with the federal and provincial governments." What type of success were you speaking about, based on the success of those two jurisdictions?

Mr Miskokomon: The issue that we see before us today is one that must deal, as a priority, with self-government. If we go back to saying that we want to move to-

wards having electoral districts and having representation within the House or within the Legislature, it does not seem to really move the issue of self-government along that far. I know it is supported by some aboriginal groups, that they would say, "Yes, we would have preferred to have guaranteed seats within the House." We have looked at their experience through New Zealand and have done some extensive research on that. Depending on who you listen to from New Zealand, either the people within the government or from the government side or the aboriginal people who are not in government, they say that this experience is very limited in its success. It is chancy. At the very best, it has not done well for them politically. Of course, there are arguments to say that—people say it is a successful experience.

What we are saying is that we do not want to get sidetracked from our main objective. We want to make sure that we move towards self-government and that we look towards having a self-government clause put forward. We want to make sure we have direct participation. We want to be positive, when decisions are going to be made that are going to impact upon us, that we are part of that process. That may very well take place in terms of having guaranteed seats within Houses and within the Legislature—there is direct participation in that way—but from our political standpoint it is not the priority that we seek. We seek to have self-government entrenched first, and then we can talk about other processes.

Mr Curling: The other part that concerned me a bit—you said they would be elected individuals but would not be members of Parliament. If you would allow me to just examine even the present course here now, there are three parties sitting here. In some of the committees we know the government puts forward its policies which it believes, of course—each government would want you to believe—are the policies of all people, but we know the government party in power has the majority. Sometimes forcefully, in the sense of debates, we put our case, and many times it is not taken at all to amend or change the policy.

You would be sitting in Parliament or sitting there on committees, not a member of Parliament, hoping that you have enough influence that you can convince the present-day government to change and to be much more attuned to what is happening, to the concern of your constituency. Do you really believe you could have that kind of impact? I am not quite sure if we have as an opposition that kind of impact. We would like, of course, to have that kind of impact to convince the present government of the policies on which we think they are going very wrong, and some things they are doing seem to be right, but some of the wrong policies where we say, "Let us now take another look, and let us take the partisan view out of it and talk about the people." Do you feel sitting there on committees you will have that kind of influence, with the kind of input you are talking about?

Mr Miskokomon: We have seen each of your parties have a turn at it, and I hear the same criticism every time we come in front of a standing committee. Regardless of what party is in opposition, that is the criticism.

What we are talking about, again—and this is one of the arguments for not having a guaranteed seat put forward—is would we in fact have the type of influence if we sat with any party? I mean, we look now at the federal system and we see that there are some aboriginal people sitting with government. But in the end analysis when the government makes the decision to advance in a certain direction, even if it goes against what our aboriginal people believe is to be right, the harsh reality of your politics is that if you do not back the government, you are not going to be back next time around. That is the reality of party politics.

Is it any different if we have guaranteed seats of eight or nine or 11, or whatever is being proposed, and they are backbenchers? Do we really have an impact within government that way? I think not. I think all we have to do is look to the federal side. This is by no means a criticism towards the aboriginal people who are sitting in the federal House now, who belong to the parties, but their problem is that they are not sitting in positions of power and positions of influence. I think that is one of the most damning arguments against being within the House.

1430

At the same time, many people are saying, "Well, we have to work within the system," the argument of Meech Lake and how it came down. It was through one aboriginal, Elijah Harper, who said no, who refused to have Meech Lake entered into the Legislature. In that instance it did work, so there are pros and cons, as we argue whether or not.

Again, I want to get back to the thing that we do not want to lose sight of, regardless of whether there are aboriginal people sitting within the Legislature or sitting within the House of Commons. The one thing we do not want to lose sight of is that we need a constitutional entrenchment for self-government so that we determine within our own territories, by our own people, the kind of direction that we want to go. We have not had a lot of luck in the 124 years of working through the Indian Act.

Mr Curling: Even at present now in the House there is one independent, if you so describe that individual. Even in the federal government there are people who have left certain parties and who have no rights. There is no process for them to speak on issues.

Having the individual elected in your electoral area and still having no voice as a parliamentarian there, I just do not see how effective they could be, because even those who are elected within the House today do not speak because of the process, even asking questions of ministers, and policies within the House. Do you not see that as weakening your process, by not having them sitting specifically in the House?

Mr Miskokomon: The first part of your rationale—I feel sorry for the constituents who elected the people who are not going to have a voice within it, if they so choose to not be heard or they sit in the position to not be heard. There are problems associated with it; we understand that. At the same time, our experience has been that—Ethel Blondin mentioned that from Confederation, of the 11,000

or so people elected to the House of Commons, we have had a representation of something around 27, so our track record has not been great within the election process. As a matter of fact, when there was an active campaign back a few years ago to elect, even nominate, people within ridings, we could not get people nominated. There were record turnouts of people within the riding not to have an Indian run as a candidate. So we come away with very little faith in the process, while at the same time we understand that there are other aboriginal people who say we should be moving in that direction. If that is their wish, that is fine. Our preference is to have self-government entrenched.

Mr Harnick: Joe, you stated in your brief, and I am quoting you: "When we address the issue of entrenchment of the inherent rights to self-government it is clear that the amendment must be worded by us." You have also pointed out to us that there are 50 aboriginal nations. In terms of wording that amendment, is there a consensus among the 50 aboriginal nations, beyond just acknowledging the concept of native self-government? I think everybody acknowledges that. Now we just want to know how to do it. Is there some consensus among the aboriginal nations?

Mr Miskokomon: Yes. In 1987, at the last first ministers' conference that dealt with aboriginal issues, we tabled wording on self-government. It was agreed to by all aboriginal people, that wording. That currently sits in front of the federal and provincial governments.

The issue that we always got hung up on was, how in fact does it impact upon provincial government or federal government rights? I think if we always move in that direction, that we have to answer every question, in terms of how will this do this or how would that do that or how would this impact over here, we will never get beyond that. That is just a simple delay tactic. It comes down to nothing more than stalling.

At the last first ministers' conference, in 1987, that dealt with aboriginal issues, it was clear that many of the provincial governments were not prepared to deal in a substantive way with self-government. It was evident and obvious that the proposals that were being put forward by federal and by provincial governments that were at least moving in that direction only wanted to move towards self-government in a delegated-authority manner. We could not accept that, because our experience with governments has been that, as soon as a treaty is signed, it is broken, and as soon as delegation is given, it can be withdrawn. We wanted it very clear within the Constitution that this is not a delegated power, it is an inherent right, and what we are talking about is rights, not simple delegation of authorities.

Mr Harnick: Is it time, as far as you are concerned, to take a flyer, accept your wording and then see how it sorts itself out down the line? Is that what is going to have to happen in order to move on from where we are now?

Mr Miskokomon: I think much of this centres around some very fundamental principles. I think it centres around honesty, respect for individuals and individual rights, collective rights. I think it centres around honesty. I think it

centres around fairness, equality. Unfortunately, during the early, mid and late part of the 1980s we were not at that table and we did not receive that kind of respect and fairness and equality and trust that we sought.

What we are telling Canadians, what we are telling governments in Canada, is that if you cannot trust us by now, when will you ever be able to trust us? If you do not know by now that the very simple thing we are trying to achieve in this country is some dignity, if you do not know by now that what we want is to get government off our backs and telling us what to do and get rid of the apartheid act, the Indian Act, and that we as people elected representatives from our own communities—our own chiefs, our own council, our own elders—and have the very basic human rights of making our own decisions, and live and die in that manner and not by the manner of having the Minister of Indian Affairs, if people do not understand that at this point, we have got a long way to go.

Mr Harnick: What do you envision as being the next step that has to be taken in terms of succeeding towards a move to native self-government?

1440

Mr Miskokomon: A step, as important as it is, is not to be shuffled back in a priority to deal with Quebec at the expense of other things, and that is how we were dealt with. In 1987 when we went to the first ministers' conference, it was not to find a way and means of how to entrench self-government. It was an obligation that was accepted by a government that did not want it, that had to follow the process and did so reluctantly. In the closing remarks, the chairman said, "When you find the necessary numbers of seven provinces and 50% to make the amendment, I will reconvene a first ministers' conference." That is not our responsibility. That is the chairman's responsibility. That is the leadership role that the Prime Minister assumes when he takes that seat. He was not prepared to do that. That told us an awful lot.

The government of Canada has to place aboriginal issues as a top priority, as not the first, but one of its top priorities, much like the province of Ontario does, and come out and clearly state it, that, "We are going to resolve some issues with the aboriginal people of this country and we will work to do that."

You cannot have a chairman who convenes a first ministers' conference and then says, "You go find the numbers, you make the wording out, you bring all this back to me and I'll convene a meeting and I'll get your clause for you." He is not getting us anything. We are doing it ourselves.

We have to have that kind of co-operation from the federal side. We have to have the kind of co-operation from the provincial side that Ontario, through Mr Davis and Mr Peterson and now Mr Rae, has taken with the leadership role about placing the aboriginal issue forward and being prepared to move that issue along, not be the type of obstructionist that we found through British Columbia, through Newfoundland, through Saskatchewan, through Alberta. Mr Hatfield was another one who after a period of time came on, said, "I understand what you're

saying and I find nothing threatening to what you say," and came on board.

We have to find a way, regardless of how Quebec is going to be dealt with. There are aboriginal people in Quebec and they have treaties with this country. We have to find a way to include Quebec into the negotiations without them feeling threatened that they are losing things to the aboriginal people, no more so than if Quebec is having separate negotiations.

I feel that aboriginal people's rights are being threatened at the same time without our inclusion. It is not an exclusionary process. It is not a closed-door process and it does not rest with 10 men.

Mrs Mathysen: Chief Miskokomon, early on in our proceedings Chief Peters came to the committee and indicated that there would be a retreat for native leaders after the signing of the statement of political relationship in August 6. Has that retreat taken place, and if so, could you share with us some of the ideas and the concerns that came from that meeting?

Mr Miskokomon: We had an initial round of discussions after the signing of the statement of political relations. As you well know, what we have to move past now is, once we have a piece of paper signed, how do we implement it? What types of things do we deal with? How in fact is the government prepared to roll back some of its legislation that impacts and impedes our jurisdiction?

There are some very fundamental things; education, for one. How do we deal with having the aboriginal language taught within the schools and at the same time dovetail to the provincial system, where the majority of our students and our children leave our schools and go into secondary schools and post-secondary schools? How do we move the issue along of having an aboriginal language taught within the schools, to a large extent in the recognition of elders, when in fact if you do not have a degree and a certificate you are not allowed in the school to teach? We have to move beyond that.

Community-based policing, child and family services, the practical kind of issues that are going to affect our people and our communities are the things that we have now to begin to address. At some point in time, we may be looking at things like an Indian education act. We may be looking at things like a separate Indian health care act or a separate Indian child and family services act, and at that point it will require the provincial government to look at the way your acts and our notions are meeting up and how you have to roll back.

Part of the biggest problem we have faced over the years is that under section 87 of the Indian Act—it is called the general law of application—where there is not a section that deals with an issue within the Indian Act, it refers itself to the provincial acts. Oftentimes the provinces pass a piece of legislation with little or no thought to how it is going to impact upon Indian people. We get caught between the bind of the provincial government saying, "We don't want to impede or in any way interfere with the special relationship Indian people have with the federal

government," but at the same time passing legislation and making laws that do directly that.

We cannot have it both ways. We have to look at issues like, when the courts have already said the federal government has a legal fiduciary trust responsibility towards Indians, when there was one crown in Canada and treaties were made with one crown, then with the division of the crown, with the federal side taking 91.24, the provincial side taking section 92 powers, did in fact the provincial government, by the sheer dividing of the crown, by virtue of the division of the crown, accept some of those responsibilities when you immediately move into the areas of child welfare and education?

I think the case can be made that you do have legal fiduciary trust responsibilities towards Indian people regardless of where we live, be it on reserve or off reserve. That does not make a lot of difference. It becomes a legal question, a political question.

Are we prepared to deal with it in those ways? Are you prepared to deal with rolling back legislation that adversely impacts on our community and saying, "Now we recognize not only the inherent right of self-government, but the things that come with it," the issues that come and impact upon our people? It will require a lot of work, because when people ask us, "What does self-government look like; how is it going to impact?" my question to you is, "Give me a specific instance and then we will work on it." But to say, "How does the world turn?" I mean, we can go for days on that one. Now that we have the general, we have to move to the specific.

Mrs Mathysen: Which brings us back to your brief and the need for consultation, when we look at legislation consultation, with the people it affects, and ultimately to the delivery of services, the native community delivering services to the native community.

Mr Miskokomon: Absolutely. We can cite a case not so terribly long ago when a piece of legislation was made, the Child and Family Services Act. Section 9, I believe it is, has to deal with Indian representation in the courts in child custody. It came down to a case of an argument between the federal and the provincial government, which is unresolved at this point, and that was some three or four years ago. It came down to the case of, does this fall under the Canada assistance plan, or 50-50, or does it fall under the 1965 welfare agreement, which is split 80-20? The federal position was that it fell under CAP; the provincial position was that it fell under the 1965 welfare agreement; and we have yet to resolve that.

I think this is where we move to those things. I think we move to saying: "What we can resolve with the province now, we will resolve with the province. What we can resolve with the federal government in the bilateral relationship, we will deal with them on that. What requires trilateral discussions, we must identify that agenda and begin to deal with those things." Trilateral becomes a very difficult arena.

The Acting Chair: Are there any other questions from the committee members? I do not see any. I want to thank you for coming before the committee and presenting

your brief. The questions, I think, that have been posed by the members have indicated our strong interest in the area surrounding aboriginal rights and the future of the Constitution. So thank you again for coming and being with us today.

1450

SHERI FITZ

The Acting Chair: I would ask for Sheri Fitz to come forward, please. As we are about to begin the next deputation, I am wondering if any people who are speaking would like to go out into the hall as we begin this deputation. Thank you, Ms Fitz, for coming before the committee today. You have half an hour to give your deputation. I hope that you will leave some time for the members of the committee to ask questions. Just for the record, would you introduce yourself and indicate what organization you represent.

Ms Fitz: My name is Sheri Fitz and I am president of Lifeline Communications Group which is based in Ottawa. My company monitors the Canadian news media for both federal and provincial governments. And since the beginning of this year, we have been publishing a daily news analysis on Canada's constitutional situation. During my address to you, I will explore the powerful role the media is playing in the constitutional debate and will elaborate on the distinct messages the media has been relaying to Canadians which have at times been very confusing.

I would like to draw your attention to the very small degree of local media activity in Canada's main regional newspapers. While the high-profile regional newspapers usually carry the most important new stories generated from central Canadian media, we have found very few local news stories on the Constitution. Although the Citizens' Forum on Canada's Future generated some local media activity in the regions as it travelled from coast to coast, there are so few local news stories on the Constitution that some people in the regions must wonder if indeed there really is a constitutional crisis.

Perhaps an exception to the rule would be the Manitoba news media where there has been a significant amount of local coverage of its own provincial constitutional committee, the Fox-Decent committee. As well there seems to have been more news on the Constitution in the Maritimes than in other regions, but Atlantic Canada seems to be more preoccupied with the ramifications of Quebec independence on its own economy than with developing a strategy to deal with Quebec's demands and the future state of Confederation. As well, in Nova Scotia, there will likely be an increase in local constitutional news since the government has just struck a committee to gather public opinion in that province. The same goes for British Columbia which this week struck a constitutional committee and we saw the first stories surfacing in the media just this week.

On a personal note, I recently returned from a trip to western Canada where people there told me there has been minimal discussion of the Constitution in the local print and broadcast media. Most of the westerners I spoke with are unaware of the activities of the various constitutional

committees throughout Canada. Also people seem to be confused about the purpose and mandate of these federal and provincial committees.

As you can appreciate, it is difficult even at the best of times for those of us who follow the debate to keep track of the main constitutional commissions in our land. However, when ordinary Canadians are asked their opinion, they usually want a simple answer to the bottom-line question of whether or not Quebec is going to separate. Thus, I believe, their indifference to the current national discussion is reflected in the regional media's waning interest on the issue.

Moreover, people seem to be preoccupied with the subject of distinct-society status for Quebec. As we monitor letters to the editors of the regional press, quite a large volume of letters from the western newspapers tend to exhibit an uninhibited hostility towards Quebec, as well as towards Canada's multicultural and official language policies. However, people writing to the editors of the Atlantic publications tend to be more conciliatory towards Quebec, in addition to minority rights.

Concerning the manner in which constitutional events are managed by both the French and English press, I would submit that these issues are often recorded at variance to one another. The news coverage of the Quebec Liberal Party's Allaire report is a good example. The English print media interpreted the report as providing another chance for renewed federalism. However, the French media predominantly focused on Allaire's recommendation for a sovereignty referendum in 1992.

What is alarming about this type of phenomenon is that it is reminiscent of the media activity leading up to the ratification of the Meech Lake accord, where two different media messages appeared to be communicated: That is, some media observers maintain that Quebecers were told the Meech Lake accord represented a type of constitutional vindication for Quebec, while the rest of Canada was told that the failure of the Meech Lake accord would mean the end of the country.

In any event, this type of phenomenon occurred just last week. When British Columbia Premier Rita Johnston visited Quebec Premier Robert Bourassa in Montreal, the English press focused on Johnston's so-called softened approach to Quebec, stating that both she and Bourassa had agreed that Quebec was, indeed, a distinct society. Meanwhile, French headlines read that Johnston had refused to recognize Quebec's right to self-determination and distinction. Therefore, one must conclude that Canadians in different parts of the country are getting two very different interpretations of events.

Perhaps one way to clear up the confusion emanating from the media on the "distinct society" clause is for both Ottawa and Quebec to explicitly state what it actually means. Unless this clarification is made, it appears that the issue could deal a devastating blow to Confederation, since a July Gallup poll recently indicated that nearly three in five Canadians said they disapprove of recognizing Quebec as a distinct society. This disapproval rating was the highest recorded in the past four years when Gallup has asked the question. However, as we at Lifeline daily monitor the

press, we see various Canadian governments continuing on the course of granting distinct society for Quebec. Consequently, there seems to be very little activity in the media promoting an understanding between Quebec and the rest of Canada. When one compares the enormous volume of news articles emanating from the Quebec media on its own future status, to the very brief discussion of the future of Confederation in the rest of Canada, it is really quite astonishing.

On a similar note, I would like to impart to you the mixed messages the English and French media have been conveying on the ominous subject of the economic feasibility of Quebec independence. In particular, shortly after the publication of the Allaire report, a subcommittee report was tabled on the viability of Quebec sovereignty, which suggested that in the event of separation, Quebec would assume 18.5% of the national debt, even though the province comprised 25% of Canada's population.

In the following week, the French media conducted barely any analysis of the study, and proceeded to simply publish the bare facts of the report. Meanwhile, in the English press, the story ran for just one day. What is significant about this scenario is that it demonstrates a principle of the power of media communication, simply that over a period of time, the perception transmitted by the media becomes reality. In this case, now most Quebecers believe they owe only 18.5% of Canada's national debt, and it is doubtful that the rest of Canada would agree.

Furthermore, as was evident in the federal government's recent speech from the throne, the federal Tories centred on the theme of economic prosperity and linked it to national unity, that is, if Canada sticks together and becomes more competitive, all of Canada will prosper. It is believed in some circles that this could promote an increased tolerance for one another, and convince Quebecers that independence is too costly.

1500

However, the problem is that media accounts of economic studies and public statements reflecting the consequences of Quebec sovereignty clearly contradict one another. A classic example of this occurred on July 16, as London news sources reported Prime Minister Brian Mulroney's contention that Canada might lose its place at the G-7 if Quebec were to separate. Meanwhile, on the very same day, and in some of the very same newspapers, a report by the Organization for Economic Co-operation and Development said that even if Quebec left Confederation, Canada would still have the seventh largest economy in the western industrialized world. Furthermore, the OECD noted that the Canadian economy might even be slightly better off if Quebec separates. Therefore, Canadians who read the press are left wondering whom to believe about the economic ramifications of Quebec independence.

In any event, and on a brighter note, over the last couple of months there has been an increase in media activity concerning individual Canadians taking the cause of national unity into their own hands. I was encouraged by reports of Ontario trucker James Taylor, who spent \$15,000 of his own money to post billboards in 15 Canadian cities which simply read, "My Canada Includes Quebec." What I

found intriguing was a news story where Mr Taylor said he was getting up to eight phone calls a day from French-speaking reporters. That tells me that the rural French media is very interested in learning why this anglophone believes his Canada includes Quebec.

None the less, Mr Taylor seems to be effectively bridging the communication gap between Quebec and the rest of Canada, and thus there must be ways that provincial governments, such as Ontario, can foster such positive communication in the media. Increased dialogue promoting a better understanding between all Canadians must be accomplished, even before Ottawa tables its constitutional package this fall. And, as more individual Canadians take the initiative to do just that, a spirit of goodwill among all Canadians, which was recorded by the Spicer commission, may prove that we are a reasonable people, and that we can work out our differences.

Personally, I believe that any attempt at renewed federalism must be sensitive to what unites us as Canadians rather than what divides us, particularly since it appears that the press pays more attention to diversity than to unity. Therefore, constitutional negotiations should involve only the common fundamental elements of redefining federalism. At a later date, constitutional negotiators can go back and fill in the remaining blanks. I also feel we must be careful not to dismantle Canada to such an extent that 10 years from now we find ourselves gathered around the same tables trying to figure out how to recreate federalism.

Therefore, I think the federal government should be responsible for issues such as medicare, health and safety standards, social programs, energy and the environment, to mention just a few. I also believe that Canada would be more competitive if there was the elimination of overlapping federal and provincial programs, as well as the eradication of interprovincial trade barriers, which could be incorporated in the Constitution. And finally, on the issue of Senate reform, we have concluded from our extensive media monitoring that Canadians earnestly desire a democratic and representative upper chamber.

In conclusion, I would like to mention briefly the constituent assembly concept. Certainly from our perusal of the regional media, Canadians are expressing a deep disillusionment with our political system, and they want ordinary Canadians to participate in the creation of a new Canadian Constitution. Regardless of what action governments take on this issue, ultimately the people of Canada will have the final say on constitutional matters, whether it is through a national referendum, or through a series of federal and provincial elections.

In addition, I am not completely convinced that an exclusive constituent assembly is the answer to our constitutional dilemma, but I do believe that some public participation at the highest levels of the constitutional process would be of no harm. Essentially, I believe Canadians must be asked through a national referendum whether they would endorse a new Canadian Constitution because, ultimately, it is their Constitution and theirs alone.

The Acting Chair: Thank you very much for a very helpful presentation of the present media response to this

issue around the Constitution and the future of Canada. We will begin our questioning with Mrs O'Neill.

Mrs Y. O'Neill: Sheri, I am very pleased you came. We started in, I guess, early February to get your publication every day. Sometimes it comes in groups of twos or threes and then it becomes more challenging to read it.

I guess I find it absolutely essential reading and we do get an awful lot put before us. The reason I find it essential is, first of all it is national, and that is very helpful for those of us who are putting our noses pretty close to the provincial ground every day, and because I think not only do you cover those that are news articles but you do take the columnists and the editorial board views as well. To me that is very helpful because many people think that those are really gospels.

I guess what I have got from it, and your presentation today underlines that, is the complexity of this issue. That is why I am kind of pleased you did not come down too strongly, for instance, on the side of a constituent assembly, simply because I think we have to do a lot more work on that and many people who throw the word into a newspaper article seem not to talk at all about how people would get to a constituent assembly, how the voting would take place, what would happen to the results regarding the elected legislators, whether the delegates would be elected, appointed, all of those things. In your short touch on the subject you indicated there are strong difficulties with the concept once you try to implement it.

I am pleased that you also talked about the economic arguments. When this particular committee began this whole process, and a lot of people have done this process in Ontario before this committee came along, we were told that very first day in our briefing from the Ministry of Intergovernmental Affairs that the economic issues on this matter would be very much of opinion; that you can prove anything economically. I think, as we have had those presentations, we have seen that.

I would like you to say a little more about a couple of things you stated. I go to page 7 where you talk about your feel for the Spicer commission recording "a spirit of goodwill among all Canadians." I would like you to say a little more about that because I am not sure the report itself, and certainly with its minority reports attached, gave me that same impression. So would you say a little bit more about why you feel that is what you got? You have certainly done a lot of extensive reading.

Mrs Fitz: Yes. As you mentioned, we read the editorials and the columnists and in my mind certain things stick out, a common theme through the writing and response to the Spicer commission. There were just tons of different opinions that came out of that, but one of them was that the findings did seem to indicate that Canadians wanted to sit down and talk and that they wanted to have more involvement with individual Quebecers. Canadians and other parts of the regions wanted to listen to the interests of Quebec.

It is not necessarily the media's opinion. I do not mean to appear to be coming down hard on the French and English media, because a lot of times what they are reporting is

just reflecting what the politicians and different experts might say. At this point there is a lot of constitutional discussion going on, but at the same time there seems to be a gap in communicating between ordinary Canadians—people in the rest of Canada and in Quebec.

When the federal government produces its report, supposedly in September, I think the report may demand all Canadians to make concessions with one another. Now is the time to promote some type of goodwill in the media. That comes on the part of individual Canadians writing letters to the editor, different provinces going into Quebec, Quebecers going out into the rest of Canada. I guess my point was just that the Spicer commission did notice a bit of goodwill out in the country, but you see, it is very conflicting, as I said in my speech. Then we read the poll that three in five Canadians do not want a distinct society for Quebec, so all we can—

Mrs Y. O'Neill: But you think there is a base that could be built upon.

Mrs Fitz: Sure.

1510

Mrs Y. O'Neill: That is certainly a good foundation.

Mrs Fitz: I think it ties into the economic arguments, that there need to be more concrete economic studies by provincial governments to take to the people and say: "Look, this is what our deficit is now. If the country splits, it could be worse."

Mrs Y. O'Neill: Very briefly, do you see difficulties arising in Nova Scotia regarding the two committees that are being set up, one basically by the Premier and one with Mr Kierans, as it said, kind of parallel bodies?

Mrs Fitz: Are you referring to the Maritime Economic Union and—

Mrs Y. O'Neill: No. I understand that the Premier is now setting up a group of legislators, three parties, similar to this, and then is having another body that is doing another kind of thing and their paths are not really planned to cross.

Mrs Fitz: Yes, I do, because there is definitely a cynicism in the land by Canadians that the governments are not listening. There has been a lot of discussion about process, about involving Canadians in the debate. What comes to mind at the moment, when the Spicer commission was ongoing and the Beaudoin-Edwards committee was ongoing and then the federal government struck another committee, that really seemed to have the power to take the recommendations from these other two committees and apply them.

There were some media commentators who said, "If you're consulting the people, why don't you wait and see what the people are going to say through these other two committees and then make legislation accordingly to reflect what the opinions are of the people?" It may appear that Nova Scotia is sort of headed down the same path.

Mr Harnick: We have had representations made to us from people in Quebec in the last couple of weeks. Depending on their politics, it depends how depressed you are after you hear them.

What is the mood of the resident of Quebec today? What are the people on the street, not the academics and not the students but the people who go to work every day and who earn a living and who pay taxes? What do they feel about this? What does the media review in those small communities say to you?

Mrs Fitz: That is a very good question, because I think most of the people in power, federally and provincially, are asking that same question. We do not get a lot of the small rural French papers. We get the main publications, we monitor the French broadcast media, which does give us a bit of insight into that where they might view men on the street. I think Quebecers are not really aware about what is going on in the rest of Canada. For example, one of them, it might have been le Téléjournal or le TVA, went on to the streets of Shawinigan and asked people what they thought of the Spicer commission, and some people did not know what the Spicer commission was. So that might give you an indication.

It is very hard to know what Quebecers are thinking. For myself, my parents are from Quebec and I have many relatives in Quebec and I know that in their communities people still want to be a part of Canada, but I would say maybe 65% or 70% of the Quebec media have a tendency to report sovereignty issues rather than promoting Quebecers staying in the rest of Canada or belonging to Confederation.

So it is very difficult to read what is going on, because some of the French publications have a sovereigntist slant. What we do daily is we take all of the English publications on a particular story and compare them to the French press, and predominantly there is a sovereigntist spin on it. So I think the Quebecers are being given information that has a sovereigntist slant, but there are Quebecers who definitely want to stay in Canada.

Ms Carter: I am also very glad that you have raised these points. I think they are very important, and I certainly personally have the feeling that the media were a problem as far as this issue goes. Going back to the Meech Lake accord and the way in which it fell through, my impression was that the media in Quebec were setting it very much as a "We do or we don't accept Quebec as part of Canada," whereas, from the vantage point here, I personally, and I think a lot of other people, did not see it that way at all. We had problems with the agreement that were quite different. For example, the way in which everything had been decided in a closed room, and then when they emerged they said, "You can't change this; you can't do anything about it; it is etched in stone." That did not seem democratic and also, of course, there was the question as to native rights, and women's rights, and so on, that caused some of us to oppose it although we were very much in favour of Quebec remaining as part of Canada.

So I think the media certainly had a bad effect there, and we had somebody talking to this group last week who was saying that, as time goes on, the situation is getting worse and worse because of the bad impression that was left in Quebec, and that the situation there is becoming more and more extreme. I think there are a lot of people in

Quebec who are now saying that, really, there has to be separation; there is no other way. Yet if they really understood how we feel, that would not be the case because there is a perception of rejection that I think is largely uncalled for, although of course we all know that there are elements within English Canada that are extreme on that. It was interesting that there was nobody in this group here that goes along with that kind of extreme opinion, and I think most English-speaking Canadians do not either.

Also, as you said, this whole question tends to be a low priority. I think opinion polls have shown that it is not at the top of people's agenda. That is probably because economic issues are at the top, people have lost jobs, say, they do not have enough money, and so on, and, of course, the connection is not made that this is an issue that has economic consequences, that "If you separate, there could be serious consequences." You pointed out that this is not presented in the same way by different media, two different groups of people. We certainly need to get our act together on that in some way.

The question is, what can we do to help influence the way in which the media do seem to be muddying the waters on this issue and to help people to understand it, because everything does seem to point to a basic agreement if only we can make sure that that is not obscured?

Mrs Fitz: I think it would be really productive for provincial committees to travel into Quebec and to speak with Quebecers, regardless of the criticism that one might encounter, and also for provincial premiers to make the journey to Quebec, because you have to go to Quebec to reach the Quebec media at large. I do not think all Quebec French journalists are out to destroy Canada either and, in fairness, quite often the politicians put the spin on issues through the media as well. I remember watching when the Quebec Liberal Party tabled the Allaire report, and Premier Bourassa did not meet with English media reporters until two or three days after the report had been tabled and he had made his speech at the Quebec Liberal Party convention. So, in fairness, a lot of times the journalists are simply reporting what the political players are saying.

Ms Carter: And the political players are sometimes playing a double game, appealing to two audiences which are separated by the separateness of the language in the media.

Mrs Fitz: Yes, and sometimes I say the constitutional debate is far too political. It really is. The statements people make to the press in the moment of anger or frustration are often very unproductive to promoting Canadian unity. Our country is really at a crossroads, and we have to be so careful about what we say not to offend one another. I think also that there has to be a spirit of humility in the land. You know, every day we watch senior political officials sometimes point fingers at one another for the faults of the Meech Lake accord or whatever, and it is totally unproductive. It really just does more damage to the debate. Thank you.

The Acting Chair: Thank you very much. I appreciate your coming before the committee. Your presentation has been very helpful to us today. Thank you.

1520

ONTARIO WOMEN'S ACTION COALITION

The Acting Chair: I am wondering if members of the Ontario Women's Action Coalition are here and if they could come forward please. I would like to welcome you both here today. I believe you have been in contact with Mr Brown, the clerk of the committee, and he has indicated to you that you have half an hour to present your report. I hope you will leave some time for the members of the committee to ask questions. You could begin by introducing yourselves and the organization you belong to.

Ms Maher: Good afternoon, my name is Janet Maher. This is Marie Lorenzo. We are on the co-ordinating committee of the Ontario Women's Action Coalition.

We actually were quite careful this time. When we did our presentation last time we came, we had about an hour-long brief, as a matter of fact, that we tried to cram into 15 minutes. That was on March 1. But I think that there are a number of reasons today why we would like to engage you on just a couple of very specific things. We have prepared for your information, or for your assistance, this set of notes.

I would just like to say thank you for inviting us to this stage of the select committee hearings to present our most recent views. We have the list of questions which Mr Brown made available to us and we are using them in a broad, general sense as a guide for today's presentation. At the same time, we are very specifically not wanting to respond to the questions in a technical way, and to the specific technical questions. We think our most useful contribution can be made by outlining general principles and applications of the Constitution. Once consensus has been reached on those principles, we think that their rendering in appropriate constitutional and legislative language is a technical matter that should be left to the people who are experts in those matters.

We have reviewed the interim report and we are pleased to see that many of the points that we raised in our brief in March are acknowledged in that interim report. We continue, however, to have a number of concerns which we hope to see you address in the future.

First of all, and again, this is to some extent reiterating the point that we made in our brief in March, we think it is critical that the concerns of Quebec and the first nations, and their timetable, be immediately addressed. For Quebec and the first nations, the constitutional debate has dragged on much too long. At the same time, it is clear that the rest of Canada has not satisfactorily debated its own constitutional agenda, and we think that those two issues and the timetables for them have to be treated separately.

The following is a summary of our concerns for each of the separate timetables, and as I say, I think it will become clear as I go along that we really think the two sets of issues must be treated completely separately.

First of all, Quebec and the first nations: Regarding Quebec we support the position recently adopted by the National Action Committee on the Status of Women, which endorses the right of self-determination for Quebec. We think this aspiration can be accommodated in a number

of ways, either within or outside of Confederation, and we think that is a matter for the people of Quebec to decide. We do not believe that in a renewed federalism which incorporates Quebec, the powers accorded to Quebec should necessarily be equally accorded to all the other provinces and/or territories. That is, we do conceive of an asymmetrical Canada wherein Quebec's autonomy is assured. Therefore, we do not believe that the question of Quebec's future in Canada should be confused with the issue of maintaining national standards or the roles of federal versus provincial governments as it is in the discussion guide.

Second, with regard to the first nations, we support the position recently adopted by the National Action Committee on the Status of Women, which also endorses the right of self-determination for aboriginal peoples. Similarly, we think these aspirations may be accommodated in a variety of ways. It is our view that the specific responses to the questions raised in the discussion paper should be a matter of negotiation between aboriginal peoples and the national, provincial and territorial governments involved.

I think it is fair to say that although we support the right of self-determination, we think it is not our place to say the ways in which that self-determination should be exercised. For a number of those technical issues, we think it needs to be a matter of negotiation.

We support the aspirations of the first nations, whether it be for self-government and/or the settlement of land claims. Should negotiations lead to an integration of aboriginal self-government within Confederation, and we think that is possible, we would support guarantees to political representation and the protection of aboriginal language, heritage and culture, as expressed by their legitimate representatives.

As I indicated, and I think this is probably the first and strongest point we want to make, we think the concerns of Quebec and the first nations need to be dealt with first and separately from concerns, if you like, of the rest of Canada.

Debates of issues such as the maintenance of national standards, the roles of federal and provincial governments, delivery of services, taxation, charter rights, reform of political institutions and so on have barely been discussed, we believe, outside the context of the struggle of Quebec and the first nations for self-determination. We think the rest of Canada must have these debates in a thorough and timely fashion. We do not believe, as I indicated, that they can take place within the same timetable as that for Quebec and the first nations.

At this point we would like to stress our concern, previously expressed to you in the March brief, about the weakness of the process of consultation and the mechanisms for accountability exhibited to date. We have also attached to this brief for your information a letter that was sent to the former Chair and members of the select committee in July regarding the process of consultation.

Particularly since the constitutional debate has been clouded by the imminent concerns of Quebec and the first nations, we do not believe there has been adequate attention paid to formulating the methods of finding out what the rest of the people of Canada want for themselves.

We support the notion of a constituent assembly to express the different aspirations of the people of Canada. The process of constituting such a constituent assembly must also be through a process of careful consultation, in order to allow for each community, and particularly those communities traditionally underrepresented in the political process, to select their own representatives and their own mechanisms for accountability. It is within such a process that we believe many of the questions raised in the discussion paper, such as the Canada clause, multiculturalism, charter rights, national institutions, the role of French and English language and so on, should be answered.

This process will take time, energy and resources. It will not suffice to engage in token hearings or consultations. Instead, it must be recognized that part of the reason certain constituencies, such as women, for example, have had limited participation in such processes is due to an unequal access to resources, and we think it is time now to begin to address that issue.

As far as the aspirations of women are concerned, the Ontario Women's Action Coalition/Coalition des femmes de l'Ontario has already set in motion a process to consult with women from different regions, communities and constituencies in Ontario to begin to address some of these questions and to begin the process of building a consensus on the structure, principles and division of powers needed to ensure women's equality in Canada. This will necessarily take time, but we expect to be able to report in a preliminary way on our own findings by the end of this year.

One thing, though, we feel certain is key for women, and it refers in fact to the announcement last week of the latest Supreme Court ruling on federal Bill C-69. We are quite concerned that women and others will want to know, given that ruling, what real guarantees there are in a constitutional process or in a legislative agreement on their rights within society.

We thank you for your attention to our presentation and we would now be quite happy to hear your comments and answer your questions.

The Acting Chair (Mrs Y. O'Neill): Thank you so much for bringing us up to date on your work. It sounds like you have really dug your heels in and that you are going to continue to communicate with us, and I hope you will do that.

Mr Curling: I want to say thank you too for your presentation. One of the concerns I have been hearing in regard to the women's movement is that certain women's groups feel excluded from the overall women's movement, so to say. They feel that, surging along in this process, they may be left out. I just want to ask you, have you heard those kinds of concerns and rumours too?

1530

Ms Lorenzo: Certainly, and it is something we are quite aware of and conscious of in our own organization, and that is why we think it is very important that the select committee, as well as any other governmental committees looking into matters that affect the people of Ontario, take special attention with representation. It is not enough to say we are here representing the women of Ontario. There

are other organizations that represent different sectors of women: the Coalition of Visible Minority Women, Disabled Women's Action and so on.

I think that the more you examine this issue, the more you see that it is also a question of resources. Women are held back by limited resources, but women of colour are held back even more, and disabled women even more. So I think there is a question and almost, if you like, a degree of access to political institutions that needs to be remedied in order for people to feel comfortable that this is a process they can identify with. So, yes, we think it is a very important issue.

Mr Curling: The reason I raise this issue is that some of the concerns and some of the struggles that the women's movements are putting forward are the present form now, some of the women of colour, as we put that, or who say the women are fighting what they said a long time ago. In other words, they were the women who had the single families and therefore the fact is that seemed to be put on the back burner itself. The movement itself has not come out and carried that forward as a primary cause, a primary struggle within that group. My point is—and I want to bring it back to the Constitution—they felt that they would then have to wait.

The same concern is being voiced in the French-speaking area, where the French struggle of language and all that seems to be the Franco-Ontarians or the Quebec French. They feel that that struggle should come forth and then the other French-speaking people's struggles will come after.

I know it is rather complex how I put it, but do you see, as I said, that primarily what we put forward are those struggles that are ahead and should be put forth much more strongly so they feel inclusive or a part of the overall struggle of the women's movement, like a French movement too, or the French-language struggles?

Ms Lorenzo: I can answer that. I am not sure how it relates to the constitutional question. I mean, if you are asking me how the women's movement is constructed—

Mr Curling: They feel it was a move forward, but their struggles will not be included, and we are talking about the Constitution where we get all the people involved. Would their concern be carried along?

Ms Lorenzo: I think so. This is why we are in favour of actually a constituent assembly that attempts to represent as many people as possible, and not only different people but different concerns that the same person might have. We are quite in favour of a very representative group being constituted and time being allocated to find it, find those representatives. We believe the communities themselves should choose them and that there should be also mechanisms of accountability.

I mean, maybe part of what you are saying is, "Who do you represent and where do you go back to account?" We think it is very important that different sectors select their own representatives, but also mechanisms of accountability and feedback, so that if there becomes a problem where they do not feel represented, they have the power to take a

person back and replace him or her with somebody who does represent them.

This is what we are trying to say. We think there has to be a lot more time and resources allocated to the whole question of the different interests and concerns that people in Canada have, because it is a very complex nation in that sense.

What we feel, I guess, is that because of the specific nature of Quebec and because of the specific nature of first nations, they have had the time to discuss so that they can come to a fairly large amount of consensus and we do not feel the rest of Canada has gone through that process.

Mr Harnick: I am interested in your belief that there are some priorities here. The issues dealing with Quebec and with the first nations have to be resolved first before we can move on and start looking at the myriad of other issues and other interest groups who have a position that they want resolved.

The position you have enunciated in your brief is really contrary to everything we have heard from groups that have appeared before us. Everybody seems to believe that this round of the Constitution has to solve all the problems. Certainly, I have been finding, and I suspect many of my colleagues on this committee have been finding, that having so many issues before us is making this task very, very difficult. How can we articulate, if we so desire as a committee, the idea of doing this on a priority basis such as you have set out without offending all the other people who feel strongly about other issues?

Ms Lorenzo: We believe that because of the specific nature of Quebec and of the first nations, they in fact have a high degree of consensus in that society. By saying there is this priority we are saying we recognize they have the right to decide for themselves—that all we have to decide in this committee, for example, is to give them that right and to go with whatever they decide. We cannot say this is where Quebec belongs. Quebec has to say where Quebec belongs and how its relationship is defined.

So, in a sense, it is not that you are going to settle it for Quebec. It is that you are going to settle your participation in it by saying, "We accept your right to self-determination." It is then up to the people of Quebec to take as much time as they like or they need. However, we do not feel the same situation exists in the rest of Canada. We think the rest of Canada is bound by a common structure where there has not been a chance for exchange. We think more time is needed for that. In other words, we think the decision to say that aboriginal peoples and Quebec can decide for themselves is a simple one and therefore it does not take a lot of time. Furthermore, we believe they are alone in that determination.

Mr White: Thank you very much for your presentation. Some of the points I find to be very surprising, particularly those regarding recognition of Quebec and its distinct rights as a province.

Certainly, during the imbroglio that led up to last year's failure, there was a great deal of conversation about if Quebec's rights were recognized. Perhaps that would mean that the rights of the minorities in Quebec or the rights of

equality-seeking groups such as your own in Quebec would also suffer. I thought you raised that point and dealt with it very well. As you were saying, it is in Quebec in fact where some of these issues have been dealt with much better than perhaps in the rest of Canada.

I am most interested in the question of what a women's group such as your own would like to see in the Constitution. You mentioned access to political institutions. You talked about the process of constitutional change. But I am also interested in equality-seeking. How that could be strengthened in a constitutional frame? You mentioned at the very end of your presentation the recent ruling on Bill C-69 and the impact it would have on women. I am wondering if you could expand a bit on what you would like to see in the Constitution.

1540

Ms Lorenzo: We think a lot of consultation has to go on still. As a fairly new group, we secured the resources to have some of these consultations among our own constituency. But as I think we say in the brief, and I want to emphasize, we feel women will be very concerned that if we engage in a lot of struggle to get different aspects of the Constitution strengthened for women's benefit, we want to know what guarantees there are that they cannot simply be overturned by a new government or a provincial government with a notwithstanding clause, etc. So one very key thing is that in the process of doing this we need to be assured that it is going to be worth while and that a new Parliament does not come along and basically say, well, we won't abide by this because of this or that reason.

These are concerns that women have addressed in the context, for instance, of Meech Lake and also the free trade agreement and so on. We concerned about securing certain equality rights in the Constitution that cannot be abrogated by future governments, that are guaranteed rights. That is one concern we have and is perhaps something new to our country because we have very special constitutional arrangements. In some ways this is creating something for the future.

Obviously, even if we have enshrined legal rights, how women can claim them is affected by their socioeconomic position. So we are considering in our debates with women how, for instance, we want to have economic guarantees to access our legal rights. Those are the kind of things we are looking at in consultations we will be conducting in our constituency from now to December. One of our principal concerns is to be sure that what we can win from governments will be ours to keep.

Mr White: So, you are looking—

The Acting Chair: Mr White, I am afraid we have to move on. We have quite a number of people on the list. Mrs O'Neill.

Mrs Y. O'Neill: I really want to thank you. This is refreshing. It is compelling. The National Action Committee on the Status of Women, I think, did outstanding consultative work. As you know, they did send a representative here, and I was deeply impressed that afternoon with the quantity and the quality of it that had gone on with the women of Quebec. That really is the only way

to understand. Certainly the previous presenter stated that. The only way for us to really understand what the question is, is to consult with those people who are posing the question.

I just wanted to tell you that I hope you have been watching, and if not that, reading our Hansard. I think you, and all women—and I do not often make the distinction—should be very proud of the expert women who have come before this committee in this second round of our hearings. Whether it was aboriginal, whether it is economic, whether it is language, we have had some outstanding presenters. This committee, with intent, tried to balance the presentations so as to be very conscious of the reflection of Ontario as it exists and the demographics as they exist.

I hope that you will be present in numbers at our conference in mid-October and that by then you will have done some of the work. I think the direction of the work you are taking is certainly the correct direction. I hope that your brief will be heard because I think the previous presenter, who certainly seems to have a feel for what is going on in the country, challenged us—and that is the first time we have been challenged and it is not an easy challenge for parliamentarians—to be humble. Certainly to solve the problems that you have presented as priorities does require humility on the part of a lot of Canadians.

Mr Malkowski: Thank you for your presentation. It was very clear. I wanted to ask about the concept of a constituent assembly. What is your sense and what does it mean to you if you have native people and women's groups, or disabled women, or visible minority women, or different groups sitting as representative; and then the same would apply for the native groups as well—that you would have different representation to each of those kinds of constituent assemblies. Is that what you are talking about in your paper?

Ms Lorenzo: Yes. Unlike the constituent assembly, as I understood it to be presented in the interim report where it did seem to still take the route of elected representatives electing other representatives from provincial sectors, we understand constituent assembly to be something quite different. We are conscious it would take not only time and resources but a lot of creative energy to come up with a good one. But we think it is worth while that different constituencies, such as those you have enumerated, be able to elect their own representatives to represent their concerns and also select their own mechanisms of accountability so there is a way that the representative comes back to the community and gets feedback and goes back and so on and so forth. So we think it is a new thing, but a very worthwhile thing that would democratize the whole procedure.

One thing we have been concerned about is that, during all these processes for constitutional reform, it has not really been very democratic; like the previous speaker said, there has to be a lot more reaching out to people and trusting them, and maybe part of that has to be that some of this consultation and exchange go on, not just in legislative committees, but within popular groups that represent those sectors, in local communities—organized by the local communities themselves, and so on. So, we really believe a lot of time and attention is needed to come up

with very many different ways for people to express themselves and feel they have really had a hand in creating a new constitution that will represent them.

Mrs Mathysen: Thank you for coming to our committee. One thing that struck me was your reference at the end of your report to Bill C-69 and the Supreme Court ruling there. Since that ruling I have read a number of things and there has been quite naturally a wide variety of reaction to the ramifications of that Supreme Court ruling. Could you comment on what you perceive to be the ramifications for women and others and what the constitutional ramifications of that will be?

Ms Lorenzo: I am going to ask Janet to take this one because she is a lot more expert on it.

Ms Maher: I think there are a number of things. Traditionally, even though we talk about needing to have a whole lot more consultation about what women want, what women need and so on, I think it is fairly clear, through all the work of women's groups across the country since the war at least—and that would be an experience that I might be able to talk about—women have favoured a strong central government because, in general, their economic vulnerability has made them need to have more access to social programs and so on and so forth.

I think what we have witnessed over the last eight, 10 years—since about the Breau report, 1983—is successive federal governments devolving responsibilities to the provinces. I guess there are a number of things: We do not think, just because services are delivered at a provincial level or even at a municipal level, that necessarily means the provinces should come up with the money for them. As a matter of fact, I think even in Ontario, the Premier last week, when he talked about the decision, talked about the fact that Ontario contributes, through its tax revenue, some 45% of the money that goes into social programs while taking back only 30% of it. I think we have been happy in Ontario with that for a long time because our recognition is that we are not just here for the people of Ontario; we are here for the people of Canada.

The big problem with that C-69 decision, I think, was that it removes predictability. Although we understand—

and certainly over the period since the war governments have looked at revisions of federal-provincial arrangements, cost-sharing arrangements or funding arrangements that relate particularly to social programs, and there may be some need for changing those. But the point of C-69—that one could unilaterally change it—means that the kind of predictability that would allow a provincial government to shift its tax and revenue-collecting measures to be able to take care of that withdrawal in the federal sector, is abrogated. You find yourself in a situation like last spring, for instance, when the province, responding to the needs of women and other people who are economically vulnerable, said it would support the social programs and incur a deficit in order to do it. Had there even been a year or a couple of years of co-ordinating those kinds of things, I think (a) the deficit problem would have been a whole lot different, and (b) we would not been left with that bad taste in our mouths about the poor people of Ontario being centred out in the way they were by this particular decision.

The Acting Chair: I want to thank you very much for your answers to the questions by members of the committee. Thank you also for your presentation before the committee. We really appreciate your coming and taking the time to present it to us today.

Ms Maher: Can I just say one word? I think the experience of the women's movement in addressing these issues has actually been quite interesting. It has taken us a number of years, probably the three or four years that I have had direct contact with the National Action Committee, to come to the kind of position that Barbara Cameron talked about when she came here a few weeks ago and I think there are lessons to be learned. We hope we will be able to kind of work with other constituency groups to see that happens.

The Acting Chair: Thank you. That ends our committee hearings for today. I would ask members of the subcommittee to stay for a short meeting, if they could. Mr Malkowski, if you could help by taking Mr Bisson's place, that would be helpful. Until tomorrow at 10 o'clock in the morning, this committee stands adjourned.

The committee adjourned at 1552.

CONTENTS

Monday 19 August 1991

Anishinabek Nation	C-1405
Sheri Fitz	C-1410
Ontario Women's Action Coalition	C-1414
Adjournment	C-1418

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Table of Contents

Table of Contents for proceedings reported in this issue appears at the back, together with a list of committee members and other members taking part.

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Table des matières

La table des matières des séances rapportées dans ce numéro se trouve à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et des autres députés ayant participé.

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

Tuesday 20 August 1991

The committee met at 1007 in room 151.

The Acting Chair: I would like to call the committee to order. My first item of business is to welcome all those in the province of Ontario who are watching the committee hearings on their television sets. We are glad to have you with us as we look at the role of Ontario in Confederation.

CANADA'S FUTURE: THE WOMEN'S AGENDA

The Acting Chair: I would ask for those who are going to present their deputation before the committee to come forward now. I would like to welcome you today for coming before this committee and making a presentation. I believe the clerk has indicated to you that you have a half an hour to give your presentation. Hopefully you will leave some time at the end of your deputation so that we can ask some questions. Begin by introducing yourselves and indicating the group to which you belong.

Mrs Armstrong: My name is Sally Armstrong. My colleague is Carmencita Hernandez. Together we are part of a committee called Canada's Future: The Women's Agenda. We are very pleased that you have given us a spot on your own agenda to bring some of our concerns to your table. We should make it clear that other members of our organization will be addressing you at another time in another capacity. They will bring some of the more constitutional details to you. Mary Eberts, for instance, I believe is on your schedule and she is very much a part of our committee. I would like to include in my remarks to you a very brief history of our organization. And yes, we will leave plenty of time for questions.

It is very important to us, Mr Drainville, that you understand that we are not a special-interest group. We represent 52% of the population in Canada. We feel it is very important at this critical time in our country's history that people see women as needing to be at the table beside men, rather than as representing a special-interest group and going back to report to our clubs or our regions.

We do not begin to suggest that we have all the right answers. What we do suggest very strongly is that we have a perspective that has not been at your table in the past—a perspective that will offer as many problem-solving solutions as anybody else who has been at the table. For example, while people are very concerned about the effect of decentralization on health programs—and certainly women are very concerned about that because women and children tend to be the major recipients of social programs—a decentralization of power or a change of power across the country might be very good for women. I think of teachers and nurses, for instance, and the kinds of hoops they have to jump through when they transfer province to province. So we are not bringing a *carte blanche* “We refuse to co-operate” or “We’re totally against.” We are saying we must be

at the table because we have an interesting perspective to bring to you.

Our group began with an event called Equality Eve. It happened on February 14. It was to celebrate the inclusion of women in the Charter of Rights and Freedoms, the 10th anniversary of that inclusion. But because we asked women across Canada to come together to celebrate, we thought it was a very good time for them to perhaps hold discussions at their dinner tables, pizza parties, pot-luck suppers, to talk about where the country needs to go and how the problems need to be fixed. We were astonished when more than 5,000 women—we think probably 7,000, but more than 5,000—became involved in these get-togethers. They filed a report to us. We filed their report to the Minister responsible for the Status of Women, Mary Collins. That is where our present group, Canada's Future: The Women's Agenda, came from.

The women's very, very clear message to us was: “Tell us where we should go from here. Tell us how we can help. We insist that we are involved.” To that end, we have commissioned seven academic papers. Those papers are in fact now in and we are editing them into a very user-friendly booklet that will allow women across Canada—certainly women all over Ontario—to be very well informed about the issues at stake. Women of course are not the only people in Canada who do not understand the intricacies of constitutional debate. Hardly anybody does. But we intend to inform women so that they can come back to you with reasonable input.

To address question 3 under the women's listing in your agenda, “What mechanisms can ensure meaningful involvement in the process of constitutional change?”, we feel that our booklet is going to do that for thousands of women. But we want to say to you that we feel your job is to do that—to get information out to all of the people, just as we are concerned about getting it to women. That will really allow citizens to make a contribution to your committee. That will allow them to say, “Now I understand exactly how this is going to affect me and my children and my job and my transportation and my moving around the province.” We feel that if we can get that information out, we will be doing the best job we can do on behalf of women.

We feel, finally, that if you can assist us in making sure women in Ontario are well-informed, we can assist you in bringing the views of all of these women back to your table when they come in after they have received our booklet. It is our hope that when women have had an opportunity to meet again and discuss the contents of the booklet, we will hold a national conference for women on the Constitution. It is at that point that we feel we can make the greatest impact. Carmencita will pick it up from there.

Miss Hernandez: I would like to reiterate what Sally has said, that women compose at least 52% of the population. Women in general should not be considered as an interest group but a vital component of the society. In relation to that, visible minority and immigrant women are part of women's constituency and part of this country itself. Immigrant and visible minority women should not be looked at as a special interest group, although people should recognize that there are particularities because of our status and our colour.

It is very important for us that the Constitution gives a commitment to gender equality. The reason I say that is because this country, even at this time, does not recognize the equality of women to men. It is very important that we make use of all the tools, legislation, statutes and acts to ensure the equality of women.

In addition to recognizing women as a vital component of this society, a commitment from government to equality would give at least an assurance that universal social programs will be in place and will not be jeopardized. We are very concerned that with decentralization, social programs will be cut back and social programs will get lost. The impact would be on a lot of women, especially immigrant and visible minority women.

We also recognize that there is systemic discrimination in the society. Giving recognition to equality of gender, which would also include recognizing the differences in colour of this particular gender, would ensure a statement from the government, or a commitment from the government, that we will say no to discrimination in any institutionalized form.

In addition to that, a strong statement and commitment to gender equality would reiterate or recognize the contribution of women to the economic growth of this country. It is very important that the Constitution be the tool that we can use to question any inequality we might face. We believe that the Constitution is the supreme law of the land and we believe that the people of the land are composed of both men and women. In Canada especially, they are composed of a lot of men and women from different cultures, colours and creeds.

Mr Malkowski: Thank you for your presentation. The one point you said you wanted to emphasize was the fact of participation, and you were talking about equality of participation. Do you mean that the numbers should be balanced for men and women representatives when you are talking about constitutional reform? Could you please clarify that?

Second, when you were talking about decentralization, can you explain more what the impact would be on women and perhaps give us an example that would help us to understand what decentralized reforms you would or would not like to see?

Mrs Armstrong: To answer your second question first, I mentioned earlier that Mary Eberts will be addressing your group and will bring particulars of constitutional change to you. The example I gave earlier of decentralization is the fact that I think it is very well accepted that women and their children are the recipients of most of our social systems. If those social systems are put in jeopardy, as people have indicated they probably will be with decentralization, we would be concerned.

To jump into your first question, our concern is not so much that it is exactly 52% women and 48% men at the table; our concern is that the women who are at the table are here to make sure women across Canada are getting their views known. It is not enough to put what some people have called tame people at the table who will go along with the status quo. The women in this country need to be assured that somebody at the table is going to put himself or herself in their shoes and say: "I'm dealing with these problems. I understand about the kinds of things women know." To double up again on the questions, we want to make sure there are women at the table who will look out for women across Canada. We do not want tame people who will simply go along with the status quo.

We will look at decentralization mostly because of the health issue. But when decentralization happens, other kinds of things that have held women—teachers, nurses—back in the past can perhaps be solved. Does that answer your question?

1020

Mr Malkowski: Yes, it does. Thank you very much.

Miss Hernandez: In addition to that, I think it is equally important that when groups come to make presentations, questions from the floor also come out regarding the women's agenda. It is also good to take that proactive role in ensuring that various groups consider or at least think about the Constitution and women.

Mrs Y. O'Neill: Thank you for coming this morning. I am pleased with the direction you have taken since February. I know you were pressed when you came before us in March because of that time line. Could you tell us a little bit about what you are doing with the other committees? You mentioned the minister at the federal level, Mary Collins. Have you had invitations from the other provincial committees, some of which we will be talking to next week? Also, what is your contact with the federal level on this constitutional issue?

Mrs Armstrong: I am not sure of all the provincial committees. Again, I have to tell you, because we all have day jobs, that we divide up the volunteer business. Some people are taking care of one part and some people are taking care of another. As for presentations to all the committees, I cannot answer that positively. We can certainly get that answer for you before midafternoon.

The federal government has shown a great deal of interest in the Equality Eve report. In fact, we did have a very small and private meeting with six of our members and Minister Clark, Minister Collins and two of their staff. It was at that meeting that we shared our very serious concerns about women being there.

I will give you an example. When Mr Clark's group, the joint committee, travels across the country hearing from people, somebody has to decide whom they are going to hear from and who is going to sit on the joint committee. With fairness in mind—we all practise pure democracy, of course—someone has to be there to say, "It isn't an unimportant event that this small group of women in Prince George, who have been studying these issues for six months, not be heard from." We need someone who is savvy to these situations.

Mr Clark was extremely sympathetic to this position. In fact, he asked our group to help him solve some of these problems and we came away from the meeting feeling there was faith. That is where we stand with that. They have since followed up in a number of ways to make sure we are involved not in a naming fashion, but in a very active fashion. I believe there also has been talk of meeting with the Premier of this province. We have had a message of faith from a number of organizations, so we do feel there is room for people to move.

Mrs Y. O'Neill: I think you must be somewhat proud, as I am, of the contributions of women to the constitutional debate in the second round, both in the Group of 22, indeed in the Northumberland group, and certainly in the presentations to this committee in the last three weeks when we have had what we would consider knowledgeable experts on constitutional matters and economic issues. Women have been very challenging and compelling in their presentations to us in everything from aboriginal issues to the division of powers. I know Mary has her own special message that she will bring, but women have been very much part of that second level of discussion we have taken. If you have not heard the presentations, I am sure you will be interested in reading the Hansard because they have been very interesting.

Mrs Armstrong: Thank you for telling me that.

Mr Harnick: You mentioned that you have some concern with the development of a decentralized Canada. We have heard a number of presentations that indicate the constitutional dilemma will not be solved unless we move towards a decentralized Canada. What generally is the feeling of women and women's groups in the various provinces towards that concept? We have heard a lot of people say: "It's fine to decentralize Canada if you live in a province like Ontario. What happens if you live in Prince Edward Island or Saskatchewan?" What is the feeling there?

Mrs Armstrong: I have to be very honest with you and say that in the Equality Eve reports that came in from 5,000 women, they said to us: "What's going to happen? Tell us so that we know and so that we can speak up." They do not have that information, as I am sure many of your friends and neighbours do not have that information. Women are often in a position where they are asked to come to a table and solve a problem. They come to the table concerned and worried and willing to work to find a solution. They probably do not have that problem at that time, as the 5,000 women in Equality Eve told us. I can tell you, the message that came from women across Canada was: "Tell us what to do. Tell us how to find out how this is going to affect us."

Our booklet is going to deal with that and while it will be public we hope at the end of August, it is looking more like the first week of September. The academic papers that are coming in are basically suggesting that you do need to worry. Even if you live in Ontario, you need to know how these things are going to play out in your house, your child's life, your transportation and job and family. You need information and that is what they have asked us to do

and what we were bringing to them. Do you have something to add to that?

Miss Hernandez: Yes. I also belong to the Ontario Coalition of Visible Minority Women, which is a member of the Organization of Immigrant and Visible Minority Women of Canada. I will just mention three things on which the great concern about decentralization focuses. One is the issue of immigration. Would decentralization mean a province can select the immigrants who come to its province? What would this mean in terms of recognizing our commitment to the immigration policy of Canada? The second is, if immigration is decentralized, would that mean a checkerboard effect in terms of social services to immigrants in the different provinces? Another issue is the issue of social services and health care. Decentralization would mean weakening of the universal social programs that we have and then the poor women and women of colour would lose from this effect. We see that decentralization would weaken the universal social programs of this country.

We also see decentralization affecting the education of our children, or education in general. Although we are glad that people are considering taking labour laws on a national scale, we are very concerned when something comes out in the news such as, a member of Parliament in Ottawa mentioning that maybe the training program should be a provincial matter or concern. How would this affect the other women or other people out of jobs in different provinces? Would that mean selective training programs?

Mr Harnick: If it is any consolation to you, I asked some months ago for impact studies the government may have been involved with to tell us what some of those impacts were, such as the economic impact of Quebec separating or the impact of decentralization. I made this request some months ago; I think it was back in March and to this date I still have not seen anything the government has done. To be quite honest, I do not know whether this government has done any of those studies, so the people on this committee are operating in the same vacuum you are operating in. If your booklet can shed some light on it, I hope you send it to us because we do not have much more in terms of those impact studies either.

Miss Hernandez: I think responsibility should also be shared equally because even these studies are being asked of the federal government and we have not received anything yet.

Mr Harnick: I wish they would all cough up the studies they have, or at least admit they do not know.

Mrs Armstrong: I am thinking of Dr Janine Brodie, who is doing one of our academic papers; I sat with her and we were talking about the fact that none of, or most, people are not at all expert on the Constitution. It is very complicated. It was an eyes-glaze-over subject at a dinner party until recently, I think, but if we help people to know what it means to them and put it in their hands so that they can argue, discuss, agree and disagree, we will have a much better document at the end. Janine Brodie sat down and said: "Listen, a Constitution is a tool. It can do this; it can do that." She had my attention. She made me feel I had a better understanding of this piece of paper we are

trying to create and that it can work as a blueprint. It is nice to know we are all in this together.

1030

Mr Harnick: Very much so. When your booklet is available, I hope you will make sure we all get a copy of it.

Mrs Armstrong: Absolutely, and then maybe you will pass it along to all the women in Ontario.

Mr Bisson: Speaking personally, we have been at this for about eight or nine months and I certainly do not consider myself an expert on the Constitution either. You are right; a big part of the problem we have in coming to terms with some of the difficulties we have with the Constitution is that it is one of those issues people are not as interested in as others for a number of reasons, and that is good or bad. I guess history will be the judge of that at the end.

You spoke about process. You were sitting down with Mr Clark and Mr Clark identified one of the difficulties he has in making sure he communicates with as many people as possible within our society throughout the country so as not to leave certain people out. I know this has been one of the major works done by this committee, with the co-operation of all members of the committee and the various people involved, as well as possible, trying to make sure you do not miss people along the way. But the reality is that you do, because in order to have a committee large enough to deal with all the people in this province, it would take some of our lifetimes combined.

Seeing that process is the biggest part of what is happening here, and I think that is one of the things we are hearing from most people, the rejection of Meech was not so much that people really had an objection to Meech other than that they did not understand it, and the second part was the process. People felt excluded.

Most governments now are somehow trying to speak to that by having a more open process by which the provinces and the federal government come to their positions and somehow keep people involved. If you had to give us any advice on the question of process, to make sure that when we do come down to zero hour, when we are negotiating the final deal and about to put this thing to bed once and for all, that we do not end up where we were with Meech the last time where somebody comes out and says: "I wasn't consulted. I didn't have anything to say about this, so therefore I want to reject it," what would it be? That was a long question.

Miss Hernandez: First of all, I agree with you that the Constitution appears to be a very difficult document to be understood by a lot of people. I think our role, yours as government and ours as members of the community and community activists, we feel is to really demystify what the Constitution is because the Constitution is a very important law. It affects our lives from birth to death and I think that is one way of doing it: See how the Constitution affects our education system, the immigration policy, the social programs, our health, the way we think and the way we can find recourse if we feel we have been acted upon unjustifiably.

With regard to the outreach to the different women's groups and different groups in this province, it is very

important that the government recognize the different coalitions and networks in this province because they have their own groupings, even in small parts or small towns of Ontario. We have done a number of consultations. The previous government and this government have lists of organizations we have submitted to them. I think that is one way of getting into it.

Second, the government should not be afraid to really let the people know it is there because, although there will be some complaints that might come with this constitutional debate or discussion, it is very important to be open and say, "We're here, we'd like to listen and we'd like to make sure you have an input in this Constitution-making." But I think you could really make use of the number of networks and lists we have done. People should not be afraid to consult with groups like our group.

Mr Bisson: But at the end of the process you go through the consultations, I will say such as this committee's, because it is the one I am more familiar with. We have gone through the first part and now we are into the second part of the process, where we are taking the time to sit down and not only listen, but act on some of the recommendations made by various groups out there. But the reality is that at the end not all those groups can come to the table. The table is not big enough. It is physically impossible for a number of reasons.

What do you do? With the Constitution, buying into it is ownership. If all the people in this country at the end can take some ownership and can see something of themselves within this final document, there is no problem with people accepting it. But if people do not take ownership of that Constitution—and ownership is by being involved—what do you do at that point? That is the big fear I have.

Mrs Armstrong: I would like to respond to your remarks. I feel exactly as you do about ownership of the document and I do not think that it is a matter of whether they will accept it; they will make it work, because if we feel that we put this together, we will work for it. It is like children if they have ownership for their toys, adults if they have ownership for their job; we all know that those of us who are given ownership for our jobs will do a better job.

But it does come down to will, and when people know there is will to make it happen and will to make it work altogether, then I think that the thousands of groups who want to present can develop a feeling that their interests are being taken care of. For instance, if we do a really good job there will be no need for us at a future date. If people have the will to understand that together we can create a document that will work for all of us, then the special interest groups, the 52% of the population, the people who feel they have got to keep reminding you, will not have to be there. It is sort of like making rules in a family. Once everybody knows what they are and are abiding by the rules, you have to spend a lot less time discussing the rules.

I believe that will is beginning to show itself. Your committee has certainly shown will, thankfully, over the long time you have been working and now it looks like the federal government perhaps is showing will; and I think that will work.

To finally answer your question, there will be dozens of groups who feel they have been left out of this process who may feel angry. Hopefully, if people know this committee is looking to represent every person in this province, a lot of groups who did not get to be heard will feel that they are being represented.

Mr Curling: You touched a little bit on immigration and it is extremely important. Considering the fact that over the years immigration has been coming to this country, and it is a long time—I do not want to use the words “trust the government” because the number of immigrants coming here has been reduced as a matter of fact—do you feel that, with the Constitution being written, there is much more openness to have an immigration policy that will be not only directed at the European market, if you want to call it that, or the European population, but will be much more open to the other parts of the world in which we could get the expertise or get the individuals who are coming here?

There has been a reduction in immigration. People believe that the immigrants coming here are more, when they are far fewer. I think something like 85,000 came in 1990 and in the previous years it was in the region of 135,000. Do you feel that writing this Constitution would see much more openness of getting immigrants from the other regions of the world?

Miss Hernandez: Writing the Constitution would definitely recognize equality in terms of immigration policy into this country. It would also lessen the selective way of how immigrants are coming in because we know that the number of immigration officers in countries like India and, say, the Philippines is the inverse of the number who would like to apply in those countries.

In terms of immigration, we are more concerned about how immigrants are going to be selected if decentralization takes place. I am sure we are all aware of the racist attitudes towards immigrants, and of course this has been found out by certain groups in this country. We feel that, in this aspect, there would be a choice to select immigrants who would be more welcome and who would fit the shade of certain provinces. We are afraid that would happen and create more divisions in this country.

Parallel to that, the services to immigrants coming in will also be hampered because of decentralization. We do not want to see that immigrant services, say, in the province of Ontario are better than the services in Saskatchewan because we feel that immigrants need the best services possible.

1040

Mr Curling: In this field I know immigrants are coming on domestic visas and especially farm workers. Do you think that this should change, that if we accept people coming in as domestics they should not come in as a two-year trial or farm workers should not have to keep on coming—because they contribute also to the economy—but we should receive them as full immigrants in this country?

Miss Hernandez: I do not see why, if we are good enough to work, we are not good enough to stay. That is the principle domestic workers have been fighting for since 1981 when they had the immigration laws changed so they

could apply for immigrant status from within. The principle is: Do we, as Canadians, adopt a policy or a legislation that would put certain workers in a different position than other workers because, as you have said, the domestic workers are forced to live in with their employers and they are very vulnerable in that sense.

In terms of domestic workers, labour laws do not apply the same way. Not all of them benefit from minimum wage in different provinces. I think there are only three or four provinces that apply minimum wage to domestic workers, so we hope in this Constitution we will be seen as workers, not categories of workers, wherein labour laws should apply equally.

Mr G. Wilson: I just want some clarification about the process which really intrigues me. I think you said this first meeting was on February 14. Have there been subsequent meetings to that, or are you waiting for the academic papers that are being drafted?

Second, what was the representation across the country? Was it quite uniform across the provinces and the territories, or are you looking to expand that on a similar model?

Mrs Armstrong: First of all, the representation across the country was very good. We did not hear from as many women in Quebec as we wanted to, but we feel quite strongly that it was a communication problem at the outset. Each group thought the other was handling it. But, in fact, I am associated with the Homemakers' Magazine and Madame au Foyer. Our French edition announced *Ève Égalité* and we had 50 letters from women saying they were going to have these events at their home. We did not hear back from all of them so that in our report we have to say that there were fewer French women represented than we would have liked. My feeling is that it was a communication problem. If I receive 50 letters from women in Quebec wanting to hold *Equality Eve* events of 5, 10, 15, 20 women, I feel encouraged that we were well represented.

So having answered that, women from the north, from a lot of native communities, from the west, from small towns, from big cities, Girl Guide groups, one group of senior citizens who were best friends since they were in the first grade—we heard from women all across the country and the amazing solidarity they showed about needing to be represented, needing to be at the table, was the most important message that we came away with.

There was no doubt that some of them felt more strongly about some of the issues than others, but there was a very loud, clear message from young women and older women in east and west and French and English and north and south and native and multicultural and non-native women who said: “We have something to say. We think we can be part of solving the problem rather than continuing to be part of the problem.”

The Acting Chair: Thank you very much for your presentation. We appreciated very much your coming out here and I hope you give our regards also to Norma Scarborough who made the initial attempt to come before the committee.

Miss Hernandez: Thank you.

The committee recessed at 1044.

1100

YORK UNIVERSITY CENTRE
FOR PUBLIC LAW AND PUBLIC POLICY

The Acting Chair: First of all I would like to welcome Professor Patrick Monahan, who is with us today. As you know, the committee has granted you half an hour and I think we can accommodate a little leeway on that. It is good to have you with us. If you could please indicate who you are for the record if you are representing any particular body at this time.

Mr Monahan: Thank you, Mr Chair. I am a professor at Osgoode Hall Law School at York University here in Toronto and I am the director of a research centre that is based at the law school. The centre is called the Centre for Public Law and Public Policy. In that regard, I have left with the clerk, and I believe the clerk has distributed to members of the committee, some general information on a research project we have under way at the research centre. That project consists of a series of background papers which we are in the process of preparing, and there is a list of those background papers which each member of the committee has.

There are two sorts of issues those papers seek to address. The first is, what type of renewed federalism or arrangements for renewed federalism might be in the interests of Ontario and Canadians outside of Quebec? Second, what are the implications, for the rest of Canada, of a decision by Quebec to opt for sovereignty? You will see there, for example, that we have some papers on the legal issues relating to Quebec sovereignty or designing political institutions for the rest of Canada in the event that Quebec secedes from Canada.

So we have some background papers, and we are also preparing a report. We have a group of 15 academics, mainly from York University, who are participating in this project and we are attempting to arrive at some consensus views among ourselves, which is a difficult process. But we are working towards that and are hoping to achieve that some time in the fall; by the end of October is the deadline we have set for ourselves. Of course you get 15 people in a room, or 15 academics in a room, and you are always going to get 1,500 different views on any one topic. That is just by way of background.

I must apologize; I do not have a brief with me. I have reviewed the material and the questions you sent to me and I would like to respond to a couple of the questions you asked. In the next six to eight weeks we will have these background papers and would be very happy to share those with the committee when they are available if the committee would find that of value.

I wanted to address three broad areas in my remarks today. First, I want to talk about the problem of rights and entrenching rights in the Constitution, and particularly about the issue of a social charter entrenching social and economic rights in the Constitution. Second, I would like to talk about the division of powers between the federal and provincial governments. Third, I would like to offer some general reflections on Quebec sovereignty and its implications for Ontario.

Before I do that I just want to make a general comment, having read the material. Mr Brown was good enough to send to me. It seems to me, reading the material and looking at the debate generally in Ontario and Canada at the present time, there is a major problem we have and that problem is how to limit the constitutional agenda. If you look at the material you sent me, virtually all the questions are, how can we entrench this right, how can we entrench that right in the Constitution? How can we entrench this principle, how can we entrench that principle? I only make the comment that the more you entrench in the Constitution, the more things you need to entrench. That is, by entrenching things in the Constitution you do not meet the needs, you create more needs.

An example might be the Canada clause. I see in your materials that you have outlined various things that should possibly be included in a Canada clause. I only make the comment that if you wanted to include all those things in the Constitution in the form of a Canada clause, the very next day there would be twice as many groups excluded because they would not have been mentioned, they would have to be included in the Constitution and their demands would be that they had to be included.

For example, you have various languages that are mentioned and that is fine: aboriginal language, Quebec sign language, American sign language, Braille and so on. But then there will, you know, many Italian speakers, there are many people who speak Vietnamese and many who speak other languages, and you can be certain they will all be before you seeking entrenchment of their languages. The problem is trying to contain the process. It is a very difficult problem and I do not have any solution to it. We have learned in our Constitution-making over the last 10 years that each time you try to amend the Constitution, you create new problems that were unintended or unforeseen at that time.

Second, as a general comment, these issues tend to be symbolic and tend to be issues about social recognition. That is fine. That is not necessarily what a Constitution needs to do, however. It seems to me that the more you have symbolic issues on the table, the more difficult those issues are to resolve. My advice to you on all these issues here today is to try to focus on a practical and pragmatic solution to problems. A practical and pragmatic solution is to say: "What is the problem in this area? How can we identify this problem, or how can this problem be identified or explained? And is there a practical way of solving the problem which does not necessarily meet all the demands for symbolic recognition, but perhaps might solve it in a practical way?"

1110

Having made those introductory comments, let me turn to these three areas I want to talk about. First is the entrenchment of rights, and particularly a social charter, which has been discussed as a possibility by various commentators and certain political leaders. It has been not quite clear in some cases what is proposed, but there seems to be some sense that there needs to be some entrenchment of social and economic rights, or perhaps some social programs which we now have should be entrenched in the Constitution. I

take it there is a valid complaint here. There is a valid concern driving this.

That concern is reflected in the decision of the Supreme Court of Canada last week and the position of Ontario and other provinces, that is, facing a situation where the federal government announces on budget day, "We're going to be funding this program by this amount, we're going to cut back on this expenditure and we're going to abrogate this agreement unilaterally without discussing it with you." Then the Ontario government has to plan its budget without knowing in advance until federal budget day how much money it is going to be getting from the federal government. This is an intolerable situation for any government in Canada to be in. That is a serious problem.

The question is, is the way to resolve that problem to entrench some kinds of rights in the Constitution to prevent that from happening? I think we can try to find the answer to that by looking to the European experience. They have been working on something called a social charter. I think it is the European experience that in some senses is seen as an analogy and by reference to this European social charter perhaps this can be a model for Canada.

I think it is important to just spend a few moments. I do not know whether the committee has heard discussion of this before, but I want to take just a few minutes to describe what the social charter is in the European Community and then by analogy say how might it be applied to Canada. The European social charter has been motivated by a desire to achieve harmonization in the area of social programs in light of the European Community commitment to a single, integrated market in 1992, and it is motivated by the idea that if you have an integrated market and freedom of labour, for example, people can move from one jurisdiction to another and there is very wide divergence in the social programs or in the laws of these different countries.

For example, if the minimum wage in Germany is the equivalent of \$6 Canadian and the minimum wage in Spain is the equivalent of \$3 Canadian, you may have a problem first of all because people might feel there is some unfair competition between those jurisdictions. Similarly, if there are social and economic programs in Germany that are very extensive or very generous and there are not very extensive social and economic programs in Spain, then the Germans might be concerned because they might feel there is a migration of people to Germany to take advantage of these more generous programs, comparatively speaking. So there is a recognition that as they move to 1992, somehow they have to harmonize or attempt to harmonize social and economic programs. There is also an idea, which is not an economic idea but an idea of promoting a concept of European citizenship. That idea of promoting European citizenship can be reflected in certain entitlements that are common to all European citizens.

Those two forces are driving this social charter. What the social charter is, essentially, is a declaration of principles, agreed to in December of 1989 by the heads of state of the European Community, talking about the need for equality, equalizing opportunities across the European Community and improving working conditions and living standards. Then this document is referred to the European Commission,

which is a kind of civil service arm or branch, which is experts headed by a group of 17 appointed officials responsible for drafting concrete proposals and legislation to give effect to these general principles.

It is not just out there as a general principle. They are actually going to be translated into laws, and the commission drafts a series of specific laws which then go to a council of ministers from the 12 member states. The member states then adopt directives which are binding on the member states mostly by qualified majority. That means by a vote of about nine. It requires a vote of nine of the 12 member states. Just to give you an example of what they are doing, currently they are looking at a directive on pregnancy leave. They are saying, "You shall grant so many weeks"—currently the proposal is 15 weeks of leave in cases of pregnancy—"and you shall pay a certain percentage of that person's wage." Another directive is to restrict to 48 hours a week the hours of work for youths aged 16 to 18. You can see that these are quite specific directives.

What is significant about this is that these are then adopted by qualified majority and are binding on the member states, so if the council of ministers, 9 of the 12, vote in favour of pregnancy leave and Great Britain is opposed to this because it does not have any pregnancy leave at all at the present time, it will be bound by that directive. There is no opting out. The concept of opting out is unknown in the European Community. If we were to do the same thing in Canada, the analogy would be that the premiers and the Prime Minister would adopt or pass some general principles which would then be referred to ministers of labour or community and social services or whatever, who would pass laws in meeting as ministers, by vote of 7 or 8 of 10 or 9 in favour, which would be binding on the provinces, even the ones who had voted against.

This tells you, first of all, that it can be confused with a process, because we call it a social charter in Canada, with the Charter of Rights, of course, in which the courts articulate the application of these general norms or how they are to be applied. This is not like that. This is a process whereby political leaders enact legislation of quite specific character. Indeed, it has to be of specific character if it is to have any meaning.

This illustrates, then, the first problem with the idea of entrenching a social charter if it is to be general principles that are going to be enforced by the courts. Why should the courts decide on the issue of pregnancy leave in Ontario? Or why should the courts decide the minimum wage, which is another issue you are going to have to deal with. If you talk about a social charter, rights to adequate income, you are going to have the courts setting minimum wages. It does not seem to make a lot of sense to have the courts setting minimum wages or directing how many hours a week you can work.

The point is that the social charter, while a good idea, would, if we were to adopt it in Canada, involve a willingness by provinces to somehow grant jurisdiction to some national body—whether a council of ministers or a reformed Senate or some other body—that would have the power to bind the provinces directly. I happen to think that is something we ought to look at in this country.

1120

I noticed in the *Star* this morning a report that the federal government is considering some kind of council of the federation. But it seems to me that the council of the federation that is being discussed there, at least from the media reports, is quite different from the European Community, because it does not purport to bind anybody. It simply says that those provinces that do not agree can simply opt out. The council does not have the power to bind those who would not go along with it. So that is the possibility of a social charter. As to how it would be applied in Canada, it seems unlikely that the provinces would ever agree to such a thing, because they are much more anxious to guard their own jurisdiction—even than the countries of the European Community, who are willing to grant jurisdiction in this way.

It seems to me a different approach is required. In agreements reached between governments, there should be a way of entrenching those agreements in the Constitution. There should be a way of making the agreements binding, of giving them the force of law. That can be done by a process similar to a process which was envisaged in the Meech Lake accord with the immigration agreements. There, a process was set out whereby immigration agreements could be entrenched in the Constitution, have the force of law, and could not be amended unilaterally. That would deal with many of the problems that have been identified, rightly so, in areas of shared-cost programs. I would propose that that seems to me a practical, pragmatic way of dealing with this problem. Whether we are prepared to go for a social charter of the type I described, it seems to me unlikely, but we should at least understand what is involved in that example.

Let me just turn again to the division of powers. There is a conflict between Quebec's demands on the one hand for more power, for decentralization of power, along with a rejection of decentralization of power by the rest of Canada, and on the other hand to maintain the equality of the provinces, with no province can have more powers than any other province. It seems to be a dilemma that is unresolvable.

Just to make some general comments on that, first, Canada is already extremely decentralized. The Allaire committee recommended 22 exclusive powers be given to the provinces, but 21 of those powers are already under exclusive provincial jurisdiction. The only one of the 22 that is not already under provincial jurisdiction is unemployment insurance, and that is only under federal jurisdiction because a specific constitutional amendment transferred it from the provinces to the federal government in 1940.

Secondly, there is a high degree of concurrent jurisdiction, of overlapping of jurisdiction, because most of the activities of contemporary government were not known in 1867. For example, health care is not specifically mentioned in 1867. It now consumes about a third of the provincial budget. The environment was not mentioned in 1867. It was not an area that governments were involved in. So most of the areas governments are involved in today were not even mentioned in 1867, which has permitted both levels of government to intervene in these areas. That means to rewrite division of powers comprehensively

would be incredibly complicated. Say you wanted to give the provinces authority over the environment, as Allaire recommends, you would have to create all kinds of exceptions to preserve federal jurisdiction in areas where it was needed or recognized as being necessary. It would be extremely difficult to write those exceptions in a way that was sufficiently precise.

The way to deal with the problem of overlapping or concurrency is, again, to provide for agreements between governments to be entrenched in the Constitution; further, to permit governments to delegate powers through agreement with each other, or to provide for other mechanisms of flexibility, such as to permit provincial laws to be paramount to federal laws in certain areas, as provided for by agreement; and rather than trying to amend sections 91 and 92, to permit agreements to be entrenched in the Constitution which can define the area that is to be affected and provide a mechanism for ensuring the precision that is necessary.

So that could deal with Quebec's demands, if Quebec has demands in certain particular areas. There is already an immigration agreement with Canada and Quebec. There are already agreements with respect to tax collection with Canada and Quebec. These seem to exist without any significant problem to Ontario people.

If Quebec has a particular problem with the labour market in Quebec because there is high unemployment and lack of labour mobility between Quebec and the rest of Canada, then it seems to me that people in Canada would not object if, through some administrative agreement, Quebec was given some additional scope to exercise powers in that particular area.

I would propose in respect to division of powers, provision of constitutional entrenchment of administrative agreements, and the possibility of agreements delegating powers or providing for paramouncy of provincial laws in specified circumstances.

Let me just make a few general comments about Quebec's sovereignty and the implications for the rest of Canada. There has been discussion of the idea of a right to self-determination by Quebec, of a right to secede from Canada. I would simply suggest that from a legal perspective there is no such right in Canadian law. It is possible, I think, to secede from Canada under the amending formula. It would, however, require the agreement of at least seven provinces plus the federal Houses. In fact, I believe it would require the consent of all 10 provinces, plus the federal Houses. But I simply say that there is some room for argument on that point.

Secondly, sovereignty-association of the type proposed by the Parti québécois would also require the consent of at least two thirds of the provinces—I believe, in fact, would require unanimous consent of the provinces as well as the federal Houses. I think, therefore, the realistic prospect of negotiating secession and/or sovereignty-association would be very difficult under the rules of the Canadian Constitution. It is going to be very difficult to achieve this so-called sovereignty-association. In fact, it seems to me it is not a very realistic possibility.

In any event, the real problem for Ontario and the rest of Canada in the event of Quebec's secession will be, first,

our links with the other provinces, and second, our links with the United States. Let me just say that it is difficult to see how the rest of Canada could survive in its present form if Quebec were to leave. There would have to be major restructuring of the remainder of Canada. Ontario would be so dominant within the remaining nine provinces that it would seem necessary to restructure the remaining nine provinces in a significant way, or the national institutions of those provinces in a significant way.

The free trade agreement with respect to the United States will certainly be open to be renegotiated by the Americans if Quebec secedes, because they will be able to argue that there has been a fundamental change in circumstances. It will be, no doubt, the opportunity for the Americans to demand new concessions from the rest of Canada. Without regard to whether you think the FTA is a good deal, the simple point is that you are going to be faced with demands for new concessions once the agreement is opened up. We already are seeing these demands in the context of the Mexico negotiations. Canada as a whole, and Ontario, are going to be in a weaker position vis-à-vis the United States, even though we were already in a weak position in negotiating the FTA in 1988.

It seems to me that secession of Quebec will be a bad situation for Ontario and for the rest of Canada—a difficult situation indeed, and one which I think is not going to be in the interests of people of this province.

I have spoken perhaps longer than I should have, Mr Chair. Perhaps I could ask if there are any questions.

The Acting Chair: Thank you, professor. It was 25 minutes for the presentation. I think we have roughly four minutes for each of the caucuses. We will begin with Mr Eves.

Mr Eves: I wondered if your group had done any study of, or thought about, the economic impact of Quebec leaving Confederation—point number one. Point number two, I wondered what your thoughts were, if any, about interprovincial trade.

Mr Monahan: In the context of Quebec?

Mr Eves: We hear a lot, or have heard a lot, over the last few years, months, weeks, days, about the concept of free interprovincial trade which we do not even have within this country. Originally it was supposed to be a reality by 1993. Now it is being proposed that perhaps it could be a reality by 1995. I wondered what your thoughts are on that matter was as well.

1130

Mr Monahan: Let me deal with the second question first. In fact, the complaint about barriers to trade can, I think, be exaggerated, because in many respects—in most respects—there is freedom of movement, mobility, freedom of capital, across Canada today. There are obviously some barriers to trade, but most studies of those barriers have said that it is difficult to assess their significance, and they might well be overestimated. But be that as it may, I think there are important symbolic reasons to deal with some of these barriers. That brings me to the comment I made earlier—if you are going to deal with these problems of barriers to trade in a serious way, what we have found in Canada is that by simply relying on consensus, on spontaneous

agreement by all 10 provinces, you are really not going to get very far.

Look at the area of procurement—government procurement. In 1987, the first ministers' conference agreed to a statement of principles and directed that there be some agreement negotiated. That agreement still has not been signed four years later. Even the agreement being proposed has very large exemptions in it so that its practical effect will probably not be of any great significance.

My sense would be that if we are going to deal seriously with the problem of barriers to trade you are going to have to create some institution that has the power to take binding decisions—whether it is a reformed Senate, or a council of ministers, or a council of federation such as the federal government apparently is looking at. In other words, you are going to have to create an institution that is going to be able to bind people. That is the lesson of the European experience. The lesson of the European experience is that they have achieved integration by giving up sovereignty to European institutions that actually have power to bind them in the ways that I have described—for example, requiring them to have common pregnancy-leave provisions.

So if we are really serious about that in this country, it is going to mean the provinces, including this province, the largest one, being willing to give up some of their sovereignty. The provinces jealously guard their jurisdiction in this country and always want to have this right to opt out of anything they do not like. In Europe, the concept of opting out is unknown. So I think that it says there are going to have to be some changes in that way.

As far as the economic consequences of Quebec leaving, it seems to me the economic consequences are going to be a negative. It is obvious that there are going to be negatives. There are going to be significant barriers that will arise over time, I believe, between Quebec and the rest of Canada in terms of trade relationships, because I do not believe that you will have the freedom of mobility that we now have—it will tend to be restricted.

Over the long term, you have the difficulty of the rest of Canada maintaining itself as a single entity. If that happens, if the rest of Canada starts to disintegrate, that of course brings us even more under the influence of the United States and reduces the ability of Ontario and other provinces to take independent decisions, political and economic decisions.

The Acting Chair: Thank you. I just want to say a word before we move to the next speaker. There are a great many people who want to ask questions. If we could try to be as brief and succinct as possible it would be helpful.

Mr Monahan: That is directed to me, I take it, Mr Chair, and I understand and I note it.

The Acting Chair: No, it is the committee too, Professor. No question about that. Mrs O'Neill.

Mrs Y. O'Neill: Well, thank you so much, Patrick. I do think that you are quite succinct in talking about very complex problems. You may be surprised. I want to go back to some of your opening remarks. I have two questions for you. You said symbolic issues maybe should not be taking a high profile. We have had several people, some of them actually from the province of Quebec, who have said

to us that on this round—and indeed on the last round—symbolism was much more important than people appreciated, that there has to be some symbolic gesture this time. I do not know how that conflicts with what you are saying. I guess the “distinct society” clause is the big symbol.

Mr Monahan: The problem is exemplified by the material the committee sent to me, which is that the moment you want to put in a symbol to recognize this particular group, society or whatever, you have 25 people or groups lined up right over here and they all have to be recognized as well. The symbolism attached to “distinct society” in the rest of Canada is absolutely negative. I think if we get back into that debate, and indeed that may be necessary, Quebec may say we have got—and Mr Bourassa is saying, “We have to have this ‘distinct society’ clause.”

My only comment is, if that is right, I am not terribly optimistic about our ability to resolve that problem because I think there is such negative symbolism associated with that and the extent of the demands for similar recognition, it seems to me, are infinite. This is just the beginning; this is the first rough draft this committee has here. What I would like to encourage is, rather than exploring the symbolic dimensions of our lives and of all the groups that would like to be recognized in the Constitution, which is not in the end going to make that much difference to the day-to-day lives of people in this province, perhaps we might get somewhere if we try to be a little more focused, pragmatic and practical. But I recognize that the government of Quebec does not seem to be willing to take that approach. I simply say I do not see how the symbolic issues are going to be resolved at this time in Canada.

Mrs Y. O'Neill: A second very short question, and you have already touched upon it. Do you think economic union, which now seems to be getting quite a bit of profile, is possible in Canada?

Mr Monahan: I think we already have an economic union in Canada. It already functions reasonably well. We have a much higher degree of integration than the Europeans do, for example. The Europeans are working towards the type of integration we have in Canada. If we are to go beyond the economic union and deal with issues in terms of provincial barriers to trade or, perhaps as well, federal impediments to free movement of goods and services and capital, it is going to have to be by the provinces being willing to give up some sovereignty to some entity. It remains to be discussed what that entity is. That is the question, is this committee advising the government and the Legislature?

I do not know whether Ontario is prepared to do that; I suspect the other provinces in Canada probably are not prepared to do that. But that illustrates the problem with the Allaire committee report because it talks about the need for an economic union, but at the same time it is saying all these powers should be decentralized and we are going to simply rely on agreement among the provinces to achieve that type of integration. In a comment to Mr Eves, I have already indicated that the European experience and our own experience show us that does not work. We do not

get anywhere. It is just endless discussions, briefs, first ministers' conferences, all leading to nothing.

Mr Bisson: You feel it is a mistake to symbolize or give symbols in regard to the whole question of “distinct society,” whatever, for Quebec. If somehow or other we do not reconcile that we do not have a country. It is as simple as that.

What I would like you to respond to is that you talked about the inability to really define within a social charter, Canada clause or whatever, some of the rights Canadians feel are being taken away from them now. The reality is that over the past number of years Canadians feel very violated—I am trying to find the word in English and it does not quite translate—in regard to some of the things we have lost. We have just seen it in the Supreme Court decision last week and the ramifications of that for this province and other provinces. God only knows where that is going to lead.

It is an erosion of things we fought hard and long for as Canadians from coast to coast to be able to entrench some things. So the real question we have now in regard to where we are going with this is that on the one hand you are saying we cannot symbolize to Quebec in regard to recognizing them as distinct society or whatever it is, and on the other hand you have Canadians who are saying, “Hold it a second, we have another problem here,” which is that we see our Canadian institutions being eroded. Those two things are competing against each other and the reality is that if we do not deal with the Quebec question, the rest of it really does not mean anything to a certain extent, because there is nothing left. So what do you do at this point? Unfortunately I do not have enough time.

Mr Monahan: My approach with respect to Quebec is to say: “What are the areas where you require additional jurisdiction to protect your distinct identity and is it possible to identify those areas? Are there 10, 20, 100, 200? Write them out, let's have a list, what are these areas? Don't talk to me about the distinct society yet, we'll talk about that in a minute, but I want to know what these areas are.” Then you look at these areas and say, “Well, what are these areas, how many of these areas do you already have the jurisdiction and what actually is the way the jurisdiction is exercised?” and see if we can resolve that.

1140

At the end of the day we may be able to—we may not be able to—but if we can resolve that, if we are able to say with the Quebec government, “Now you agree that this granted power would resolve or would deal with your concerns,” then maybe it is possible to say, “We can dispense with this idea of this distinct society, whatever that means,” because Mr Bourassa was always saying in any event that the “distinct society” clause was there to give him all these powers in Meech Lake. He did not get any new powers; he got the “distinct society” clause.

You say to him, “Well, we'll give you the powers that you need.” I perfectly understand that he may say: “It's not good enough. I have to have this symbolic recognition.” I am simply saying I am not convinced that is going to be possible. But then you say, “What about these things, that

Canadians are being violated?" I agree, they are being violated, and what is being violated is the sense of national institutions, programs, a sense of being Canadian. The answer to that, though, is not to transfer more power to the courts. We have to be very careful in not transferring powers away from elected politicians more to the courts. I guess I would propose that agreements entered into by the federal and provincial governments should be binding and not—

Mr Bisson: I wish the Supreme Court had recognized that last week.

Mr Monahan: That has to be accomplished now through a constitutional amendment, that they are binding and they cannot be unilaterally changed except in accordance with the terms that provide how they shall be changed, so you write into the agreement if you want to change it. I think that is a possible way of dealing with the concerns that arise out of that Supreme Court case last week.

Mr Bisson: I have many other questions, but I will leave it to others.

The Acting Chair: As we have three people who want to speak I will take direction from the committee. I take it we should continue the questioning if everyone approves. Why do we not continue, then, with Mr Harnick?

Mr Harnick: I was interested in your comment that we must contain the process and the idea that the more you entrench, the more needs you create. The difficulty I feel personally in trying to deal with all of the issues before us is there are too many of them. There are too many people who have expectations that this time around their wish list is going to be granted. How do you build a Constitution when you have to do everything at once, as opposed to doing things in a prioritized way?

Mr Monahan: I think the answer is that if you have to do everything at once, the lessons of history tell us you are not going to succeed.

Mr Harnick: That is what I am afraid of.

Mr Monahan: If the demand and the belief is that we are going to resolve everything at once, every problem at the same time and, moreover, that we are going to resolve it through the Constitution, so that we are going to resolve the problem of the environment by writing something in the Constitution, we are going to fail. We are not going to be able to do it. The only way we are going to be able to do it is in some way saying these are the major problems we feel have to be addressed at the present time and it will be up to people such as yourselves, political leaders, to say, "These are the views that we as elected legislators have." The people can vote you out, people can say they do not agree with you. On the other hand, if there is a reasonable attempt to accommodate a reasonable amount of concerns, I think most Canadians are reasonable people, but there are no guarantees of success. One thing you can be sure of, if you try to resolve everything at the same time, you are absolutely not going to succeed.

Mr Harnick: I agree with you if you are going to try to be practical and pragmatic. As a supplementary to that,

does the process have to have something built into it, as one witness told us earlier, that would carry on constitutional discussions on a permanent basis, so that those whose problems were not solved this time around know there is a body that is continuing the process?

Mr Monahan: I am of two minds on that, because on the one hand the prospect of a permanent process is perhaps a way of saying that these problems will be addressed at some time in the future, and perhaps that is the attraction of it. The problem is that it means we are constantly going to be immersed in a discussion of our Constitution and short-term political problems, that whatever is in the headlines today is then going to find its way to that constitutional bargaining table. That is what we have seen in this country over the last five years since 1986.

I think it is very problematic to have a permanent body looking at the Constitution unless that body is simply issuing reports and making general recommendations. If we are seriously going to be amending our Constitution on a permanent basis, I think it is going to cause more problems than it is going to solve.

Mr McClelland: Mr Monahan, Mr Bisson mentioned something I would like to try to pursue a little bit further. You talked about the concept of having a binding agreement. I wonder if you could draw on your knowledge of the European experience and the model with respect to answering a question that comes to my mind. To what extent do you think it is feasible or possible that you could actually have a binding agreement without a right of appeal? Does it not seem inevitable that some aggrieved party is going to find some hook?

If you have a social charter sitting off to one side, then it is somehow linked constitutionally by reference to the Constitution, and at the end of the day somebody is going to put forth an argument that will have that matter you suggest is binding as between the provinces brought into litigation and determination by the court. What mechanism is there, if any, for one of the parties to an agreement if they feel aggrieved?

Second, if I can get them both on the table right now, to the extent that you see a North American economy probably inevitable—whether we agree or disagree we will probably move to a North American economy and even more so internationally over the next few years—to what extent do you think we are going to be driven economically rather than politically and socially in forcing ourselves to resolve some of these issues in terms of a charter that provides some sort of homogeneity across Canada and indeed North America?

I see the two as being linked. If you are talking about moving things into a social charter and articulating the number of ideals that ought to be met and some uniformity across countries, certainly that will spill over into North America and then have impact and perhaps linkages with Europe—the first one in terms of the mechanics of enforcement and, second, the impact on an economic-driven agenda.

Mr Monahan: Make no mistake about it, the goal of the social charter program in the European Community is ultimately going to be enforceable laws that you could go to court to enforce, but the point is that the laws are written

by legislators, in this case the council of ministers. They decide whether the pregnancy leave is going to be 15 weeks, 10 weeks, 25 weeks, or whatever. It is not up to the courts. You do not say the court is going to pick a number out of the air. The ministers, the political authorities, decide this is the law, but then it is enforceable in the normal way.

The way it becomes enforceable is that each member of the community has to enact as part of its domestic law the European-wide standard and they can be compelled to do that. Then that becomes part of the domestic law of each country, and a citizen who wants to have entitlement to pregnancy leave in the United Kingdom, or whatever, can go to court in the normal way. It is important that there be enforcement.

1150

If we are going to have a social charter, and I think there is merit to the idea, we have to understand that what we are talking about is articulating laws, passing laws by some political authority, not by the courts, that can then be binding, so that average citizens, ordinary citizens, can have access to the courts. That is important because it does preserve something that Mr Bisson talked about, which is the idea of national citizenship. If we had such a mechanism in Canada, it would promote a sense of national citizenship, because as Canadians there would be certain things we are entitled to. That is the power of medicare. It is something that is an entitlement across the country, but in order to get to that, we have to create some new institutions. Simply giving it to the courts is not going to get us anywhere.

As for the North American, I am not sure I understand the question about how we resolve these issues. I am not sure I got the question.

Mr McClelland: I was probably trying to throw too much out there at one time. Mr Eves mentioned the economic impact of the potential separation of Quebec or fragmentation of Canada. My sense is that we are going to see a change in North America, and indeed globally, that we probably cannot even begin to contemplate. I am wondering to what extent your research has indicated that there will be an economic imperative, if you will, that will supersede the political-social engine that would compel us to resolve and hold things together in this country, if the rapidity of change and the things that are taking place, both in a North American context and indeed globally, are such that you see that as something that can be marshalled to drive us or force us to really rethink our position with respect to one another in holding our country together.

Mr Monahan: I think I understand a bit better what you are saying now. I think there are economic imperatives. There is no law that says people have to invest in Ontario. If Ontario is not a stable jurisdiction, if Ontario becomes unstable, then people will not invest here and we will all be worse off. But I do not think you can keep a country together by threats or by the idea that if you do not stay together the sky will fall. I do not think that is a way, a basis, for keeping a country together like that and I do not think Canadians will choose to do that. There has to be some basis for us agreeing on some principles, or whatever,

and you cannot keep a country together by fear of economic doom.

Mr McClelland: I just want to simply say that is good news to hear from you, because there is a sentiment prevalent that says, "It's okay, we're going to be forced to hang together anyway." Thanks for those comments.

Ms Carter: You started off, I think, by saying what we would all probably agree, that we do not want Quebec to secede, but on the other hand we do not want too much generalized decentralization. You brought in the concept of what is happening in Europe as a way to avoid this. It seems to me, first of all, you have a problem convincing some of the provinces that this is the way to go. How would we do that? Second, if you are relying on—you mentioned a 9-out-of-12 type of majority of the ministers' group that you have. Supposing, for example, that Quebec was always in the three that disagreed or tended to be in that three a larger number of times, maybe, than some of the other provinces, would that not mean we would be back to square one and there would be restlessness and Quebec would be unhappy and so on all over again? Is there a way we could overcome that?

Mr Monahan: I think that is the fundamental problem we face in Canada; that is, the provinces, not only Quebec but other provinces, are not willing to give up any of their jurisdiction, their so-called sovereignty. They are even less willing to do so than they are in the European Community. So all this talk about how we are going to use Europe as a model—in fact, I am doubtful, if you look at the European experience, that provinces in Canada would be willing to do this. All right?

Taking that as my starting point, let us look at some very practical, limited possible changes of the nature I have described and the nature of administrative agreements to transfer powers, agreements permitting agreements to delegate powers, permitting agreements to provide for the paramountcy of provincial laws in certain circumstances to be specified in the agreement. Those are limited changes and I am saying it may be possible to respond to Quebec's demands for more power through these types of mechanisms without offending the feeling about the equality of the provinces that is very strongly held outside Quebec. But I agree with you that in this country the idea that provinces would give some sovereignty to some national or supranational body is probably not something the provinces are going to want to do.

Ms Carter: Mr McClelland, I think, was quite rightly bringing in the question that economics is maybe more of a deciding factor than constitutional manoeuvring might be in the long run. I would just like to bring in the question of the environment. I think if we do not look to that, and quickly, and do something very definite here and encourage people elsewhere to do it, we are going to find that we do not have the basis on which to meet all these ideal situations we would like to have.

Mr Monahan: But the answer surely is that we solve the problem of the environment not by writing about it in our Constitution but by committing ourselves, through law and as a society, to dealing with these problems. Writing

about them in the Constitution is not going to solve the problem of the environment.

The Acting Chair: Thank you very much, Professor, for being here. I am glad we took the extra time to question you and to receive the wisdom you have to offer us today on the issues around the Constitution. I hope that if there is any more information you or your colleagues have written, you could forward that to the committee at the earliest possible date. We will certainly try to move through that material to help us in the final report we will be writing.

Mr Monahan: I will do so, Mr Chair, and I appreciate the opportunity to address the committee today.

The Acting Chair: Before we adjourn, I would like to say two things about the agenda. The first thing is that Professor Mahoney from Edmonton indicated to us that she would rather meet the members of the committee who will be travelling out west than travel here to Toronto, because of time constraints on her behalf, so she is not going to be on tomorrow at 11:30. The members of our committee who are going to Edmonton in our travels west will meet with her. In addition, tomorrow at 2 pm, Professor Julius Grey is to be added to the list of people presenting deputations.

I remind the subcommittee members that we are going to have a brief subcommittee meeting right now.

The committee adjourned at 1158.

CONTENTS

Tuesday 20 August 1991

Canada's Future: The Women's Agenda	C-1421
York University Centre for Public Law and Public Policy	C-1426
Adjournment	C-1433

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

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Le mercredi 21 août 1991

Select committee on Ontario in Confederation

Comité spécial sur le rôle de l'Ontario au sein de la Confédération



Acting Chair: Dennis Drainville
Clerk: Harold Brown

Président suppléant : Dennis Drainville
Greffier : Harold Brown

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Table of Contents

Table of Contents for proceedings reported in this issue appears at the back, together with a list of committee members and other members taking part.

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Table des matières

La table des matières des séances rapportées dans ce numéro se trouve à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et des autres députés ayant participé.

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au (416) 325-7400.

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

Wednesday 21 August 1991

The committee met at 1008 in room 151.

The Acting Chair (Mr Drainville): First of all, I welcome the viewers from across Ontario who have tuned in to hear the deputations that are to be made today before the select committee on Ontario in Confederation.

TOM KIERANS

The Acting Chair: I would like to welcome you, Mr Kierans, before this committee today. I wonder if you would just make a brief introduction and indicate who you are representing.

Mr Kierans: Thank you, Mr Chairman. I am Tom Kierans. I am the president of the C. D. Howe Institute, which is a national public policy institute engaged in the analysis of public policy issues of the day.

The Acting Chair: As you know, you have half an hour. I hope that you will provide us with a little bit of time to ask you some questions at the end of that.

Mr Kierans: The clerk suggested that I take about 15 minutes, which is kind of difficult with an issue of this size. I will do my best to hold it to that. The clerk also suggested that it would be useful if I kept my remarks around pages 6 and 7 of the questionnaire that you distributed. I will do that, although I am quite happy to answer any questions to the best of my ability that the committee may have. Let me just put in one qualifier. At the institute we are examining these issues in very great detail. We expect to have completed our analyses by some time late in the fall. Anything I say here is certainly subject to learning better as the debate deepens and broadens and becomes more sophisticated.

Let me open by saying that from my perspective the failure of Meech Lake came at arguably the worst possible time for the country. It has led to an enormous distraction at a point in time when the challenges for the country from an economic viewpoint, which is the angle of perception through which we filter things at the Howe, are very great. Throughout the 1980s our debt due to federal fiscal policies and the debt due to gross domestic product ratio just shot right up. Our performance was the worst of any one of the Organization for Economic Co-operation and Development countries. As a consequence, a huge component of our annual budget is devoted simply to servicing the debt.

We have also been through a very difficult time because without a complementary fiscal policy, monetary policy has borne the burden of dealing with inflation. This has been very costly for Canadians in terms of interest rates, in terms of the exchange rate, and it is unfortunate from that point of view.

Taxes have also been rising as a consequence of our desire to provide our citizens with appropriate public services and the inflationary components and the dynamic components within them. We are now at the point, however,

where we are looking at tax revolt from coast to coast. Taxes are punitive and this also constitutes a challenge.

At a time when national unity should be foremost in our minds, it is ironic and indeed regrettable that the fiscal flexibility of the federal government has really never been weaker. This is extremely important in terms of holding the country together and providing our citizens from coast to coast with a fair measure of opportunities.

We also signed the free trade agreement and that led to a whole series of adjustment problems throughout the last part of the 1980s. This, combined with globalization and competitiveness issues, really has meant that we ought to have been focusing, in terms of public policies, on human capital formation. It is my contention that, around the world, financial capital will chase human capital. It is my contention that we have the finest stock of human capital in the world. It is also my contention that if we are to remain competitive and continue to enjoy the levels and standards of living that we have enjoyed and improve them for future generations, the quality of human capital has to be raised constantly. Job skills, upgrading programs—these are the kinds of issues that we should be concentrating on.

The Meech Lake issue has skidded us offside, however. The issue is pitting multicultural and aboriginal visions of the country against the vision of the two founding nations. It is pitting a centralist vision of the country against a federalist vision; it is pitting individual rights against collective rights, and it is subsuming economic imperatives under legal issues, as is indicated, for example, by Mr Clyde Wells's comment that the Constitution was too important to be left to economic considerations.

It has also revitalized some hoary myths. One of the pop words of the day is "asymmetric" federalism. We have always had asymmetric federalism. Quebec has collected its own personal income tax. It has designed its own personal income tax base integrated with its social policy programs, avoiding welfare traps. Nobody else does that. That is a form of asymmetric federalism. They have their own civil code. They have always had it. They have opted out on various programs such as national pensions and so on. The focus on asymmetric federalism as if it was somehow a new beast is rather foolish.

Another hoary myth that has been raised is the issue of equality of the provinces. I for one do not know where it is written that Prince Edward Island has the same say in the national affairs of the country as do other regions. I also do not know where it is written that the maritime provinces can govern themselves in a very chaotic kind of manner and rely on subsidies from the rest of the country to do it. So equality of the provinces is distinctly a myth that has to be dealt with.

The third and final myth which I would deal with is the notion that equality of opportunity, of providing our citizens

with safety nets from coast to coast, means that we have to give it to them in place, which is to say that in Newfoundland you can work 10 weeks and go on the dole for 49 weeks and you do not really have to go across the country and look for a job. I think as Canadians we have to be in a position to afford all of our citizens opportunities, but I do not think we have to afford them opportunities in any particular outport in which they might work.

When one goes through all these kinds of issues, I find it useful to trisect them, because it is complex and it is overlapping.

The first trisection deals with what I believe to be Quebec's legitimate aspirations. When I speak of Quebec in the present context, I am talking about the francophone population which is resident within the province of Quebec. Most Canadians seem to be prepared to acknowledge that this population constitutes a distinct society, but they are not prepared to acknowledge that the province of Quebec is the representative of that distinct society.

The reality of the matter is that the francophone population of the province of Quebec has captured the trappings of the government of the province of Quebec. The reality of the matter is that the francophone population of the province of Quebec has every reason to feel concern about its cultural and linguistic aspirations. It has a population growth rate of 1.5%. It takes 2.1% just to stay even. They are seriously concerned about being swallowed within a North American environment and they look to their government to promote and to preserve their distinctiveness, most particularly in the area of culture and linguistic issues.

These to me are absolutely legitimate aspirations for that society, but what we are running into in this country—and one of the factors that led to the failure of Meech Lake, regardless of a final-second holdout—is the fact that anglophones, English-speaking Canadians in the rest of Canada, do not see it that way.

What we are doing as anglophones, of course, is putting up our notion of charter rights against the Quebec notion of charter rights. We are pitting individual rights against collective rights. It is my view that it is a conceit for one liberal, pluralistic, democratic society to seek to impose its notion of the equilibrium point between collective and individual rights on that of another liberal, pluralistic, democratic society, but that in fact is what we are doing in Canada today.

We are going to have to recognize the distinctiveness of Quebec or else we are going to force it out. I think anglophones in the rest of Canada are going to have to understand that this is not the referendum of 1980. This is not economic blackmail against Quebec. The cost to all of us of Quebec being forced out because the rest of us were not prepared to recognize its cultural and linguistic distinctiveness would be colossal. Our standards of living in the rest of Canada, not just in Quebec, would in my judgement be impacted to the extent that they were during the Great Depression in the 1930s. So I think people should focus on this conceit that I am talking about. I think they should focus their minds wonderfully, because a great deal is at stake.

In so far as the rest of the issues are concerned, the federal government has correctly called this latest round

the Canada round. This is quite true, because the issues are Canadian issues, they are not just Quebec issues. These are the issues associated with the division of powers, the duplication of programs, the debate over national standards.

1020

They are also issues that have to do with how we treat our aboriginals, and while we are slow in coming to the understanding that for good and bad reasons we have treated them dreadfully, paternalistically, and that our actions have been nothing to be proud of, the solution will be a long time in coming, much longer in terms of coming than could be the Quebec situation, not because Quebec has put an ultimatum on the table but rather because the issue is incredibly complex and we have to determine what the aboriginal rights are, both before the courts and through negotiations, on virtually a band-by-band basis across the country. That is going to be time-consuming indeed.

In so far as the division of powers is concerned, there is another myth somehow that we are going to have to decentralize the country if we are to take into account all of the demands of Quebec, and that all provinces would have to be the beneficiaries of this same division of powers. The reality in my mind is that we are not talking about centralization versus decentralization; we are talking about recalibration, we are talking about efficiency, we are talking about measuring the extent to which we are overgoverned and overlapped and we are talking about analysing which programs can be run at what levels most efficiently.

Within that context, certainly since before the Second World War we have moved from the decentralized society to a very centralized society. The pendulum comes and goes, and goes back and forth. It need not be a constitutional issue. It need not be etched in stone. These issues have been handled through fiscal negotiations between the federal and the provincial governments for an extended period of time.

I think that pragmatism is going to have to be the order of the day in dealing with the second of the trisecting issues I am talking about. I will say, rather controversially, that I do not think we need the federal government in national health care mandating national standards to sustain what has become a national value which would be preserved, in my judgement, at the provincial level if it were returned to that level.

On the other hand, job skills training and upgrading, argued from a constitutional point of view, is a provincial responsibility. I again would tend to regard the federal government as having a very major role to play. So when we talk about recalibrating, we are talking about doing it pragmatically so that we can deliver to our citizens the most efficient government possible, so that we can compete in a global environment with the greatest weight that we can muster among ourselves.

The third component of the trisection is essentially the demands of the Quebec élites. We in English Canada have had that before, not from Quebec but from ourselves during the nationalist surge of emotion during the 1960s. The élites were the beneficiaries of that, and ordinary people bore the cost.

Similarly, for those of you who have read the Allaire report, which was prepared by the Liberal Party of Quebec, one can see what the Quebec elite demands are. But I firmly believe that if Canadians are prepared, in my trisection, to recognize this distinctiveness of francophone Quebec and the obligation of the government to promote that distinctiveness, and if under the second trisection of the issue we are prepared to reallocate powers according to efficiency in the interests of all Canadians, then for the third trisection we just say to the Quebecers, "The answer is no." Just say no.

Canada does in fact stand for something, and I believe that Quebecers in a referendum will recognize that and vote overwhelmingly in favour of remaining within the union.

I myself am not overly concerned about the desire of some Quebecers to separate. I think the transition risks and the transition costs would be colossal both for Quebec and for the rest of Canada. I do not think anybody is willingly going to take that kind of hit if the distinctiveness is recognized, on the one hand. But on the other hand, simply because the costs would be very great, we are not into an economic blackmail situation here.

The 1982 patriation of the Constitution and the establishment of the charter was devastating from the point of view of modern Quebec. It makes it very difficult to recognize Quebec's distinctiveness. I believe that once we have done that, the rest will fall into place and the transition risks and the transition costs will evaporate.

Those are my opening remarks. I will attempt to answer any questions you may have.

The Acting Chair: In that 16 minutes, you covered a great deal of territory. I thank you very much for coming today and presenting that.

Mrs Marland: I really enjoyed your presentation, Tom. It is true that you covered a lot in a very short period of time. I found it very interesting when you were referring to safety nets in place. I am substituting on this committee for a few days in these three weeks, so I do not have the benefit of hearing all the presentations since February and I do not know how many times, if at all, that has been mentioned before. I wonder if you would like to elaborate—recognizing how employment opportunities vary from time to time in different economies for different reasons, whether it is fisheries in Newfoundland and so forth—on how governments could deal with, by necessity through economic downturns, the relocation and retraining of people with special skills in one area.

Mr Kierans: This is, to my mind, the biggest challenge that we as a country have and the most complex issue, so my answer is of necessity going to be a little bit longer than would normally be the case. We have a problem in this country which I often characterize as being a problem of the fact that we no longer have enough German grandmothers or Jewish mothers to provide the incentive for our young people to go to school and to understand and develop an education and a work ethic. What this means at the end of the day is that society has got to figure out a way of letting people live to fight another day. This is crucially important. It means that when young people

come out of high school, in many cases virtually illiterate and unskilled, and then find out what is going on out there, we have to have the means whereby we can reintegrate them back in terms of job skills and job upgrading.

Many of our industries from coast to coast are under-going, not because of the free trade agreement, tremendous adjustment problems. I will give you an example. The fishery industry on the east coast of Canada is essentially a social industry; it is not an economic industry. The cost of supporting that many people in that industry is no longer a burden that can be borne by society. Philosophically, it is also no longer a burden that should be borne by the individuals themselves, because their dependency is increasing as each year goes by. What we have got to do is to set up systems—and these exist in Germany, in Scandinavia and in a variety of other places—in which people are trained into the new skills that will enable them to relocate at job level.

That is why I made at the beginning, in my opening remarks, that very controversial remark about how maybe this is a federal responsibility. Labour mobility and giving people equal opportunities from coast to coast may argue that the federal government would be the best agency for starting what I would think of as a new nation-binding program. Instead of trying to hold on to all the programs which they helped to start, and correctly so, in the beginning, such as national health care, they might get out of some of them and start a new one. This would involve integrating with community colleges; it would involve integrating with industry; it would involve very powerful training techniques. People would not fall into welfare traps under a new system whereby you do not get unemployment insurance if you are being retrained, for the sake of example.

I found it very interesting in the questionnaire that everything was about people's rights and nothing was about people's obligations. Nothing was about people's obligations to try to become gainfully employed. Once society offers people those advantages, which I believe it should do and do more thoroughly than is now being done, then I believe people have the obligation to go to where the jobs can be found. I am not sure that is a satisfactory answer. I told you it was a very long answer, and it is even more complicated than that.

Mrs Marland: I appreciate it. Thank you.

1030

Ms Carter: I have two aspects I want to raise. You gave us a pretty thorough analysis of the situation. You say we should recognize Quebec's distinctiveness and just accommodate that into the government, and you are saying that is already done to a large extent, that we have a symmetry already in the government. But at the moment we do have problems, or else we would not be into all of this. So how do you see the recognition of Quebec's distinctiveness being incorporated into government at the federal level in a maybe more satisfactory way than we have at the moment? Maybe I could come back to the other point afterwards.

Mr Kierans: I do not see it as a federal issue; I see it as a provincial—province of Quebec—government issue. When all of the federal is cut aside, what it really means is

that if you live in the province of Quebec and you do not like having to speak French, that is life in the big city, and if we are not prepared to cross that Rubicon, then we can just forget the whole thing. That in a nutshell is what it comes down to.

Ms Carter: But then there is the question of federal members of Parliament voting on issues that in fact are Quebec's responsibility, so that they are deciding for other provinces on issues that they are not sharing in. Do you not see that as a problem?

Mr Kierans: I understand where you are going, but that is not how my model would work. I would simply recognize the right of the government of Quebec to promote, as was in the preamble of Meech Lake, the cultural and linguistic distinctiveness of the province of Quebec, period. That does not go into removing Quebec federal MPs from being able to vote on all of the other policies. It just reinforces the cultural character of the province of Quebec.

Ms Carter: Okay. The other thing is that you are saying people should be relocated from Newfoundland outposts and so on. This is an enormous issue. I do not think we can really thoroughly go into it, but I think I would disagree with you on that. I think if fishing does not pay when you are an in-shore fisherman in Newfoundland, it is not because that is basically a bad way to live, economically or in any other way; it is because the big guys have come in with trawlers, with all their sonar equipment and so on, and scooped up the fish to the point where stocks are not being maintained. So I do not think the in-shore fishermen are the problem there.

I think we have to look at the whole question of not taking more from nature than it can supply. If that kind of question were solved, then people could live in these places and support themselves and be economically sufficient even when they are living on welfare for part of the year. Actually, the way of life is a frugal one, a sensible one, and really does not make a lot of demands on the rest of the world and is less subject to some of the ups and downs that the rest of us feel. If this can be maintained, I do not think it is such a drain on us as maybe we might think. After all, if you preserve this kind of lifestyle, this kind of place, it is something tourists can go to and enjoy. I think there is going to be a great future for wilderness, as there is less and less of it on this planet, and we need those people who belong in those places to stay there.

Mr Kierans: I respect your opinion. I disagree with it, and I do not think we have to take the time of the committee.

Mrs Y. O'Neill: I thank you very much for your presentation. I also want to make, I guess, a more blanket endorsement of the work of the institute. I think it certainly for quite a long time now has been one of the resources that we are following closely, and we do keep in touch with your work.

I am glad you used the word "myths." I too feel that myths are being inculcated into some people's minds. Being married to a Maritimer, however, I would have to be more gentle in some of your myths than you are.

Have you done impact studies that are very detailed or are quite focused? We seem to be having a lot of

trouble finding those documents within our own province and beyond.

Mr Kierans: Impact studies on what, may I ask?

Mrs Y. O'Neill: On what separation would mean, the kinds of things you are suggesting would mean, that kind of thing.

Mr Kierans: Yes, we are doing those studies. Those studies will be progressively released as the summer and the fall go on, and they will be very detailed studies.

As a preliminary and very personal observation or conclusion, if you would, it is my view that the cost would take place around the currency, around foreign creditors' view of the country and around the impacts on the costs of capital that we would have to go through. It would also take place in terms of a flight of capital from the country. I am not talking about Quebec; I am talking about all of Canada. I believe that, as a result, our ability to sustain the nation would be much diminished.

It is my judgement that there are only two areas of Canada that can go it alone in the event that Quebec leaves. Clearly one is Ontario and the other is Alberta and British Columbia. But I believe that Ontario would be a loser, and a very substantial loser, number one, because of the trade arrangements between Ontario and Quebec, and number two, because of Ontario's export markets and its importation of foreign capital, which would be curtailed. So when I go through the thing at the end of the day, I see the people likely to lose the least, if at all, would be Alberta and British Columbia. The rest of us, beginning with Ontario and moving on down, would be tremendous losers.

The Maritimes would be in desperate shape, for the simple reason that the transfer payments that come out of Ontario, which are already getting curtailed because Ontario taxes are high—Ontario has to remain competitive with the contiguous United States and so on. Under these kinds of circumstances, it is arguable whether Ontario would be able to afford the burden of making those kinds of transfer payments. That would be absolutely brutal for the Maritimes, and it always bemuses me that people like Premier Wells say that this is not an economic issue. It is an economic issue, in my humble judgement.

I go through all of that to make the point that I think that—while it sounds very crass to say so, I will say it none the less—the economics of the situation are so frightening that people have to concentrate their minds on the distinctiveness of the province of Quebec and decide whether that is a price they are prepared to pay or not.

Obviously there are conflicting visions of the country and obviously we all have respect for other conflicting visions. What we have is a head-on collision between Mr Trudeau's vision on the one hand, ironically a French Canadian Quebecer Prime Minister, and the vision of a more federalist society which permits the tectonic plates of the country to adapt to local preferences and local differences. If we cannot overcome that conflict, then I really do despair for holding the country together and therefore I really despair for the standards of living and the opportunities of our children.

Mrs Y. O'Neill: Will you be able to send us the impact studies?

Mr Kierans: Yes.

Mrs Y. O'Neill: Our report is not going to be prepared until November, so maybe you will meet our time lines. I had another question. I do not know whether the Chairman will let me close.

The Acting Chair: I am afraid we cannot; I am sorry. Mr Kierans, as I said, you have covered a great territory, and the questions have responded appropriately. So thank you very much for coming, and I hope to get some of those impact studies. I am sure the committee members would be glad to look at those.

1040

CANADIAN ETHNOCULTURAL COUNCIL

The Acting Chair: I would ask our next deputants to come forward, please. Good morning. I want to welcome you to our committee today, and thank you very much for taking the time to come before us. As you know, the clerk of the committee has indicated to you that you have, I believe, half an hour for your presentation. If you could leave a portion of that time for questions from the committee, that would be very much appreciated. Could you please, for the record, give your names and the organization that you represent?

Mr Chan: First of all, I would like to thank the committee for allowing us to speak on this matter. It is the second time that I have been given the privilege of appearing. My name is Lewis Chan. I am the president of the Canadian Ethnocultural Council, and with me is Eureka Bynoe, representing the national association of Barbadian Canadians and a director of the CEC as well. I believe that the members here have a copy of our brief. Is that right, Mr Chairman?

The Acting Chair: Yes, we do, thank you.

Mr Chan: Perhaps I can bring you along with the brief in about 10 minutes or so. That would give us enough time for some questions and answers.

First of all, on page 1 is a summary of the recommendations. The second page, which on the top says "Brief to the Select Committee," gives a bit of introduction on our council. Our council is a coalition of 37 national organizations with our various chapters across Canada. Our mandate is to build consensus among members, and we have been working on matters, including the Canadian Constitution, since 1980. A substantial number of our members are located in Ontario and that is part of the reason why we are here.

Coming to the first point, the preliminary list of constitutional guarantees for ethnocultural minorities, one of the things we would like to see in the Constitution is inclusion of a Canada clause. We think this is very important and in fact would be absolutely necessary in this round of constitutional talks. Part of the reason for the failure in the last round was that the round was not seen as inclusive, so we would propose that this round be a Canada round embodying many other areas so that it can be supported by as many people as possible. The Canada clause would include recognition of cultural diversity as a fundamental characteristic.

To recap, the clause would include the following items: aboriginal peoples and their status as a distinct society; the recognition of the linguistic duality of Canadian society; regional diversity, including the distinctiveness of Quebec; the diversity of Canadians based on national or ethnic origin, colour, religion or multiculturalism; equality of gender, and social and economic justice.

Moving on to the second page, the second item which we see as being very important is the protection of the Charter of Rights. It is our view that the Charter of Rights must be secured and not be diluted over the years. It is still a relatively new document and the full effect has not been seen over the years yet, although we of course have seen some very dramatic interpretations of it. We believe that the charter is basically a very good document and adds to our Constitution in Canada. While there may be some critics of it, we think that we can take what we have and perhaps improve on it, rather than just tear it apart. In particular, certain sections in the charter are of particular concern to us, including section 15, which deals with equality of rights, and section 27, which deals with multiculturalism.

As a subpoint to that, decentralization or devolution of powers: It is our hope that decentralization be kept to a minimum. There has been in the last number of years a number of programs which help minorities to achieve equality at the federal level, and I believe that this is not the time to dismantle these programs or to go backwards on them.

Some of the policies include things such as the Canadian charter, the Canadian Multiculturalism Act, employment equity and amendments to the Broadcasting Act. As well, there have been a number of departments responding to these issues, including the Canada Council, Health and Welfare, Justice and so on. We believe that a devolution of powers or decentralization would not be in the best interests of minorities.

The next item is review of the "notwithstanding" clause. Section 33 of the charter, we believe, should be reviewed with a view to it being either repealed or seriously curtailed. It is our fear that this section may be an escape hatch for governments that may want to withdraw rights at a certain date in the future.

So our recommendations are highlighted in the first page, and at this point I will ask Ms Bynoe to carry on with the rest of the presentation.

Ms Bynoe: I would like to thank you for this opportunity to address this select committee, and I am glad that we can participate in the process.

I will deal with, on page 3, the involvement of the people of Canada. We know that participation for all Canadians at every level is very much something that everyone is involved in, but we would like that involvement to be meaningful. More and more we know that public participation will be essential in the years ahead. This is the only way, we feel, that public trust will be restored in the political system and the constitutional development system.

More important, we feel that all proposals must be open to amendment and improvement, because it is only when amendments are possible that hearings are seen to be worth while. Our recommendation for this is highlighted: that the people of Canada be meaningfully involved in the

consultative and decision-making processes of constitutional amendment.

The next approach, the role of interest groups: We are all aware that interest groups play a key role in the development of government policies and programs. These groups articulate to the government the needs and aspirations of the membership they represent. We know that sometimes they praise good policies and sometimes they criticize bad policies, but that is what democracy is all about.

On an ongoing basis, viable organizations develop consensus among their members on a wide range of issues and the input gained from them is often based on years of consideration of many related issues. This is something the average citizen cannot do because he is not as deeply involved in the issues.

Therefore, we recommend that government should be open to public input. The interest groups, though, should be seen as representative of people. We know that our groups here sometimes are multi-interest groups, because they represent women, employers, labourers, minorities or francophones. These groups address a large number of issues of interest to their membership and also speak about issues which may not directly affect their constituents, but these groups address the big picture and consider their own interests in the context of several other interests in society.

Our council has recommended improved process using referenda or constituent assemblies. What we have thought about is that the referenda be used for large issues, several issues and not one particular issue, because it might be that the majority voting on a particular issue might be to the detriment of the minority.

As we go on to the constituent assembly, we really commend this type of assembly, because it is essential for a good model of involvement of a large number of Canadians. We have some thoughts on the constitution of this assembly, however. We feel that the mandate of such an assembly should be to make a report on all the constitutional and related issues regarding the future of Canada and, where possible, actually draft the wording of the proposals. We feel that interest groups will be important in adding a perspective to both the governments, national and provincial, and we feel that sectors of societies and various issues will be addressed by the various interest groups.

We know that deciding on a representative will be difficult, because the representative should not be seen as partisan in any way and should enjoy a wide degree of support in the constituency from which he comes. Election of such a representative would be difficult, but at present we have national organizations which have representation from many parts of the country as well as having been democratically elected. We feel that such representation is a result of democratic processes that have already taken place and it is important that these persons are answerable to the interests they represent. We feel that the representatives should not be persons who are elected to public office in any Legislature or appointed to a position relevant to the constituency they would represent.

We know that our organization is a national organization but all of our national organizations have provincial chapters. Therefore, we recommend that a constituent assembly

be established to recommend on all constitutional and related matters consisting of federal parliamentarians, provincial legislatures and interest group representatives.

1050

Mr Chan: That concludes our presentation. We are ready to answer any questions the members may have.

Mr Malkowski: You have made us a little bit more aware of the issues of your group.

You were saying you had a concern with section 33 and the "notwithstanding" clause. That section can be used as an escape hatch for some provinces to opt out of programs. Do you think that would have an impact on section 15 and section 27? It makes those sections weak in terms of rights. Do you think that section 33 would have a real impact on rights? Could you make a recommendation in terms of substitution for that or a strengthening of that?

Mr Chan: Yes. In regard to section 33, it is our view that this clause should be changed or deleted because we are concerned that a government of the day, of any day, may use it to override those parts of the charter or other laws which are important. We feel that is one of the weaknesses of the charter, it being an escape hatch that a government could use. It is nothing we need to worry about if the government is good; it is if one day a government is not good or is responding to some public sentiment of the day. As we know, public sentiment swings back and forth depending on certain issues. As minorities, we feel that one of the things that would be protecting us is the law, and of course the supreme law is the Constitution and the Charter, so we feel we need that protection and section 33 weakens that.

Mr Ruprecht: The work the Canadian Ethnocultural Council has done in the past is very noteworthy. I know most of your members realize this country will never be the same after the new constitutional arrangements that are going to be implemented. I would hope that Quebec will stay within Canada, but if we fail and if you fail, I think that all those people we have heard this morning and at other times, when they say: "We might be able to sustain a country with Ontario, Alberta and British Columbia. We've got impact studies"—I think it would all be a real shame and waste. I would think that in the end, the force that will be in place with the Americans will destroy Canada, and I think it will be only a matter of time.

I know that you not only represent thousands of people who are looking to you for leadership and guidance here but also many other Canadians who are not members of your organization, because you are an integral part of this country. There is no doubt about that.

I see a minor problem in your presentation which needs to be clarified. On the one hand, we have the Canadian Jewish Congress, the German-Canadian Congress, the Italian Canadian congress, the Ukrainian Canadian Committee and a host of others who have appeared before committees of this kind. To the same point, they all agreed that the distinctiveness of the Quebec clause gives us a major problem in that they have always seen in the past that Quebec has not been overly friendly to ethnic culture communities. But in a new Canada clause you have included part of the

cultural diversity, linguistic duality, and then you are saying this morning that you would agree to have the distinctiveness of Quebec within the Canada clause.

Here is my question: On the one hand, having witnessed personally the many organizations that are part of the Canadian Ethnocultural Council, saying it has a major problem with the distinctiveness clause, and on the other hand you are saying that part of the distinctiveness clause should be recognized within your Canada clause. I would like you to point out how this could be done, because I think this could be a major benefit to the deliberations of this committee.

Mr Chan: Not having heard the other witnesses, as you may have, I am not sure I can comment directly on what they may have said when they appeared before the committee. Our draft or proposal has been circulated among our members and approved.

Coming back to the question of the distinctiveness of Quebec in isolation and accommodating it within a Canada clause may be two different things, initially, maybe over the last two or three years, we struggled with this concept somewhat. What exactly does a distinct society mean? Does it take away certain things from other minorities? Does it infringe on other rights?

Looking at the overall perspective, if there was a Canada clause which embodies the diversity of Canada or multiculturalism and a symbol of Canada, as well as other characteristics, our council feels that it is supportable. If we do not have the recognition of the diversity of Canada, the peoples of Canada, then our support would only be lukewarm. I think maybe if you take a look at the overall picture, what we are proposing is that there be a Canada clause encompassing recognition of various realities within Canada, including the native peoples, the distinctiveness of Quebec, the diversity of peoples in Canada. So in that overall context, we would find it supportable.

Mr Harnick: I am interested in your views on the "notwithstanding" clause, particularly the idea of curtailing its use, if it is not repealed altogether. What I would be interested in is the method or what you have in mind in terms of the ability to curtail the use of section 33 of the charter.

Mr Chan: At this point in time, the only thing that would curtail it is public opinion. Perhaps a shortening of the period could be one option. So the government of the day would have to return more frequently to have that clause used, but our preference is to have the clause deleted.

1100

Mr Curling: The work that you are doing is extremely important. I know how complex it can get.

I want to put a question to you, answering actually two questions. First, it is indicated quite often that the public has lost trust in politicians, and we want to restore that trust. I just wanted to know if that is the way your brief actually says that public trust can be restored.

In doing so, I presume we lead to constituency representation and presentations. But many politicians are voicing the opinion that we have to get the public to have input into all of this process. Quite often we say when we have

representations or a gathering of ideas, "Please exclude politicians."

Let me say it from this point of view: the women's movement, for instance, and women's rights have been asserted—which over the years have been excluded—and placed in the Constitution. We would talk about women's rights. We would not dare exclude women, even parliamentarians who are women, from the process.

I have noticed that even in multicultural discussions—and I am asking you if you have observed that—that they have; I say "they"—the process seems to exclude visible minority politicians, which I think is a loss.

I say that because while we do the constituency assembly, we seem to somehow say, "We don't need politicians," or "We don't need anybody who's appointed by the politicians to represent people of that constituency." How do you think one can go about that in making that kind of selection?

Mr Chan: I personally do not think that everyone has lost faith in politicians, but these days in the consumer age, whether it is politicians or institutions, a lot of them are under attack. Even the policy of multiculturalism is under attack.

I think it is important to note from that area that there is not only a policy but there is legislation. I think these slings and public opinions come and go. Institutions are here to stay.

As to how to improve it and to regain the public's faith, I think politicians, first of all, cannot be excluded from the process. Our proposal is that in the constituents' assembly, or however you call it, some sort of committee, perhaps a third of it be federal politicians, maybe a third at the provincial level, but there has to be also representation from non-politicians, because politicians are elected to represent their constituents and they have to represent that area.

Other interests groups, whether they are in the environmental area, or minorities or women, have specific expertise in certain areas and I think they can contribute a certain view and perspective and deliver in very clear terms what the discussion may not have otherwise. They can bring that perspective to the committee or to the assembly, so I think they should be included.

So our proposal is a convention or assembly that would include politicians and non-politicians, but it is important that the person who takes part be accountable to the constituency that he represents, whether it is in the environmental area or the poverty area, or whatever, and not just be a token person who is an ethnic or a woman and who does not represent the views of the broad majority of people there.

Mr Curling: On page 4 of your presentation you say at the bottom: "Deciding on the criteria to pick representatives is difficult. It is important that such representatives not be seen as partisan in any way and should enjoy a wide degree of support in the constituency from which they come." My question is, who makes that decision?

Mr Chan: First of all, that part refers to the non-politicians, obviously, because politicians are partisan in themselves.

Mr Curling: Who will make that decision to pick that individual?

Mr Chan: Those names could be put forward by the federal or the provincial government, or a combination of them, but we could use some sort of formula so that it is not a partisan way.

One proposal would be to have perhaps 50% of the politicians decide, at least the support of two parties, so it is not just the government of the day, whether it is any provincial government or the specific federal government. We would have at least two parties, with 50% of the elected officials deciding. That could be one model.

The Acting Chair (Mrs Y. O'Neill): Thank you, Mr Chan. You and Ms Bynoe have a few more minutes. If you would like to make closing remarks, we would certainly welcome that.

Mr Chan: I do not really have too much to say to conclude other than perhaps two things. It is important to recognize, both within Ontario and within Canada, the diverse nature of Canada and how it has changed over the years. Our constituency is, I believe, an important one and wants to be part of the mainstream in helping to decide and chart Canada's future. We want the system to be an inclusive one so that we can be supportive of future developments. We would be working closely together with other interest groups, governments and opposition parties to further Canadian unity. In fact, the unity of Canada is within our council's constitution, so we have some bias there.

We would like to do what we can to help and it is our hope that the Canada clause, including the recognition of diversity, be included within the Constitution. We have many members in Ontario, including Toronto, and if there is any way we can help in further documentation or information you would like, we would be glad to assist.

The Acting Chair: Thank you very much for bringing us up to date on your constitutional work and for your continuing interest in this very important issue.

CANADIAN COMMITTEE FOR A TRIPLE E SENATE

The Acting Chair: Mr Brown is next.

Mr Brown: I am Bert Brown from Alberta and I am national chairman of the Canadian Committee for a Triple E Senate. I have held that position since the start of that committee, which was originally a provincial committee. It lasted only six months as a provincial committee, moved into three other provinces and had to become a national committee in 1983.

The Acting Chair: I understand you have a little bit of Mr Clark's ear.

Mr Brown: We have one E of three anyway.

I would like to highlight the presentation that I think you have all been given copies of. I will skip entire pages, so if anyone loses me, you will have to just ask me what page I am on. In the interest of time, I would like to give as much time for questions as possible. I think most people have a fair understanding of what my committee is all about already.

I would like to thank you, first of all, for allowing me to appear. Queen's Park is becoming quite familiar to me. This, I think, is my fourth appearance here over the years.

The first time was with the Deputy Premier of Alberta, Jim Horsman. I was a member of his task force on Senate reform.

To begin, I would like to define first the three basic principles upon which the Canadian Committee for a Triple E Senate has operated for some eight years. It is the goal of our committee to reform the Canadian parliamentary system to make it more attuned to the needs of a modern confederation.

The first principle would be to elect in future all representatives to the Canadian Senate. The second principle would be to give the provincial partners in our Confederation an equal number of elected representatives in that reformed Senate. The third principle is to confer upon the Senate, through an amended Constitution, the powers necessary to make that legislative body an effective voice for all the provinces.

1110

We have participated in a number of task forces across the country, one for the Reform Party of Canada, and one, as I have already said, for the Alberta government. My committee has never commissioned its own polls, but it is greatly encouraged by the rewards they reflect for our efforts to explain the need we see for Senate reform, the benefits thereof and the dispelling of myths and roadblocks to reform which are thrown up by those opposed to change in the status quo.

The national percentage in favour of a triple E Senate parallels the recent poll, at 55% in favour, which interestingly is the same percentage in favour in Ontario.

The balance of my presentation will be broken into two parts. The first is to describe the focus of where the body of work on Senate reform has led us to date and the second is to explore the concerns of those sincerely opposed to reform.

With regard to the present focus, after years of promoting an idea based on the three principles—elected, equal and effective—we have found it desirable to translate widespread agreement in principle into something more specific. A great deal of work on the mechanics and details of various Senate reform proposals has already been done by various committees early in the past decade. For references, we have listed a number of reports.

The body of this legitimate work has made a clearer focus on the areas of agreement and disagreement in comprehensive reform much easier for all of us. My assessment will begin with the one principle of complete and unanimous agreement among the works mentioned, that the Canadian Senate should be directly elected by the people of Canada. As your Chairman has already said, Mr Clark apparently agrees with that assessment.

I will preface remarks on the second principle, equal representation in the Senate by province, regardless of size or population, by stating that no legitimate advocates of Senate reform intend to fundamentally change the democratic principle of one person, one vote currently represented by the existing makeup of members in the House of Commons. What we do desire is a vehicle to democratically represent the legal entities which make up our Confederation, the provinces, on an equal basis in the Senate. Such representation is justified by the recognition of this second principle of a confederation: representation for the partners.

Examples of this are found throughout the world, most notably Switzerland, Germany, the United States and Australia.

The provinces of Canada now exist as legal entities complete with legislatures solely empowered to enact legislation for the protection and benefit of the interests of their residents in specific areas of education, health, resources, etc. Equality of representation in the Senate would provide a democratic voice for all the provinces whereby their interests would not always be vastly overshadowed by the influence of provinces holding the larger populations.

Understandably, this second principle of equal representation in the Senate finds greater favour with the smaller provinces than it is expected to find in the central provinces of Ontario and Quebec. However, it is worthy of note that even in Metropolitan Toronto my committee finds support among minority concerns which see a reformed Senate as a legitimate vehicle for expression of their interests.

No clear consensus on the exact number of equal senators which should represent each province has to date been reached. The number proposed has varied from a low of two to a high of 20 per province.

In addressing the third principle of the triple E concept, the need for an effective Senate, I think it can be fairly stated that no legitimate purpose exists to reform the Canadian Senate unless the objective is to make that institution an effective instrument of some agreed-upon jurisdiction. The achievement of real Senate reform will require extraordinary effort to reach consensus, and few would argue that we undertake this task merely to entertain the academics in the political science departments of our universities or the intellectual élite among us.

I was pleasantly surprised by the comments of former Attorney General Ian Scott during my first appearance at Queen's Park in the fall of 1988. Mr Scott stated that certain precedents had taken place in Canada—such as the Edmonton accord, the first ministers' conferences and the preamble to the Meech Lake Accord—"which had firmly established in the minds of Canadians the principle of equality of the provinces." He went on to say that Ontario "may" not fight the principle of equality and ended his comments by saying, "Ontario will want to have major input into the effective powers of this new Senate." I am sure this will be no less true of Premier Rae's government.

To date, there seems to be agreement that to be meaningful, Senate reform must result in a degree of power residing in the Senate that would enable its majority vote to be reflected in the decision-making process at the national level on an ongoing basis. Concurrent with this desire for effective and legitimate power in the Senate of the future, there is an underlying concern that such power not result in a deadlock where the House of Commons would be paralysed by a mischievous and obstructionist Senate.

No amount of assurances that such an event would rarely happen in reality are able to assuage the fears that it could happen. In fact, this once did result in deadlock and double dissolution of both Houses in the Australian experience. A clearly understandable and workable method of preventing deadlock must be agreed upon for Senate reform to win the

hearts of Canadians in general. The current actions of the existing appointed Senate do not help to allay such fears.

If a weakness exists in the first triple E amendment drafted, it is the deadlock-breaking mechanism suggested where a joint committee of both houses would meet to resolve disputes. A more clearly understood and workable suggestion may be found in the amendment proposed by the roundtable discussion in Calgary of February 1990. One of the participants, Dr Alan Cairns of the University of British Columbia political science department, suggested the use of an unusual majority to break deadlock. This unusual majority would have two components.

1. To overrule the defeat of a bill passed by the House and defeated by a majority vote in the Senate, the Commons would be required to repass such a bill by a percentage vote larger than the percentage vote in the Senate.

2. Such a percentage vote would have to reflect a majority of members of Parliament representing seven out of 10 provinces and 50% of the population. This provision is quickly recognized as the majority currently required for constitutional amendments. In all but the rarest of cases, it would require the support of opposition members of Parliament in at least some provinces, and proving such widespread support throughout Canada would clearly be sufficient justification for maintaining supremacy of the House of Commons on any particular issue.

In summing up my presentation here today, I would like to dispel a few myths about the goals or motives or fears surrounding the triple E Senate.

First is the assumption that tiny Prince Edward Island will somehow frustrate the will of Ontario or Quebec in a triple E Senate. This assertion is patently absurd, since the Senate would operate by majority vote of its members. The addition of the smallest 26 states by population in the United States shows they represent 17.4% of the total United States population. The same addition of the six smallest provinces by population in Canada would represent 19.1% of the population. Interestingly, 78 years of a triple E Senate in the United States has never produced a single occurrence where the smallest 26 states have combined exclusively to veto the largest 24 states.

Second, a charge is made that the Senate would simply become a mirror image of the Commons. This would almost never be so if the senators were elected by the provinces and supported by provincial party coffers only, ineligible for cabinet positions, elected by provincial parties not having a national mandate—for instance, the Parti québécois, Social Credit, Western Canada Concept, the Confederation of Regions, etc—as well as the mainstream parties and if elected on fixed six-year terms, with staggered elections for continuity.

Third, the argument is made that the reformed Senate would make Canada harder to govern. Reform could possibly make it harder to govern as badly as it is being governed today, but by providing for reform into which provinces, large and small, can have an equal voice to promote their interests, Canada would be easier to govern, with both the perception and the reality of fairness.

Some critics of the triple E are beginning to label it as the power grab by the west. In reality, the triple E is a

design for a counterbalance to offset the unfairly weighted influence given to populous provinces which allows interests of both the western and Atlantic regions to be effectively ignored when national decisions are made. The west and the Atlantic provinces do not wish to always win, or even always automatically oppose the Senate. They want only to be heard, with some real chance of having influence in the political process.

1120

More, even sustainable growth throughout this vast country would reduce the environmental stresses along with the man-made stress of traffic congestion, cyclical inflation, boom and bust economies and frustrations of those who feel left out of the mainstream of Canada's future potential.

The most often asked question of my committee and myself over the past eight years is, why would Ontario and Quebec ever agree to equality or effective powers in a reformed Senate when they have everything their own way now? While our answers have always been sincere and each with some merit, they have repeatedly changed and evolved.

Our first response was to say that the eight other provinces will some day accept nothing less. Then we grew to honestly feel that the central provinces would agree to meaningful reform because Canadians are basically a fair people. It is now apparent that eventual agreement on Senate reform will come in the simple interests of an ever-increasing need for national unity.

Canada is a democracy. With meaningful Senate reform it is capable of becoming a great democracy. The Canada we have now is too vast, too diverse to be governed intermittently by first ministers' conferences, and it is far too important to be governed by heated confrontation.

I leave your committee with this thought: It is only through public participation at these types of forums that we can prevent the kind of divisive rhetoric and constitutional crisis that we face as a nation in the months ahead. Conversely, when our government's leaders participate in constitutional deals which exclude Canadians, they set us against one another and create tensions which may be impossible to erase.

As a Canadian, I fear that the people of Quebec have erroneously convinced themselves that the vast majority of English Canada is rejecting them. Nothing could be more untrue. Yet, deceptively fostered, perception has become reality. It is difficult to imagine how Canada could be stronger or compete better globally by becoming smaller and more divided. It is impossible to imagine how Quebec people could effectively preserve or protect their language and culture by isolating themselves in an enclave and passing laws which would effectively restrict options and opportunities for their own people in a global economy in a shrinking world.

The inextinguishable move to universal communication is a very real threat to the French language. We have no magic solutions, but of one thing I am certain: The threat to French is real and that threat does not originate as a conscious or planned course of action by English Canada. It is a consequence of a collective direction in the modern world.

The constitutional bottom line for western Canada is a Triple E Senate. Without this minimum, western Canadians

are fully prepared to see the future federal government so decentralized as to make it impotent and without the tools to continue national programs.

My committee feels it cannot be overemphasized to state that the preservation of the Canadian Confederation rests on two fundamental principles: an effective and equal voice for all the provinces and no special status or privileges for any one province.

The Canadian Committee for a Triple E Senate believes in three basic principles for the renewed Canadian Confederation. They are: equality of citizens in a reformed House of Commons, equality of provincial communities in a reformed Senate and equality of charter language communities.

Ontario has a golden opportunity to be pivotal in the renewal of Confederation as a mediator between western, Atlantic and Quebec aspirations. If partisan issues can be put aside, perhaps we can yet reach out to Quebec with generosity, and it will give enough to understand the compelling need to compromise and reach back to us.

For your committee the task is great, as we honestly feel that consensus on Senate reform has the potential to be the foundation upon which a bridge to the interests of Atlantic, central and western Canada could be built. It is to be hoped that sufficient goodwill exists in the hearts of Canadians to overcome the real constitutional crisis we face. I believe the goodwill still exists. Thank you.

Mrs Y. O'Neill: Thank you very much, Mr Brown. It is nice to meet you in person. I certainly have read about you and your work for some time. You must be happy that you represent one of the three major discussion points that have consensus across the country, and that is significant.

I would like to ask you a couple of things. On page 10 is the first time I have really seen that written down as completely. No doubt you have written it before, but I have not read it. There seems to be a real attempt here to divide the upper and lower houses as we knew them in former times and now the Commons and the Senate. In other words, the cabinet positions being totally out of the upper chamber and these kind of provisions that you seem, in my mind, to be underlining, those two houses now have to become very much more separate. I would like you to comment on that.

The second comment: Could you say whether your plan could accommodate something else that is coming along from the left, it seems, and that is another federation, another kind of economic union representative of the provinces?

If you could just comment on those two things, it would be helpful.

Mr Brown: First of all, I would not use the word "separation" in terms of the two houses. It is not our intent to separate them as much as it is to throw every roadblock possible into the path of any partisan interest which would make the reformed Senate a mirror of the House of Commons.

By example, we do not want senators to be eligible to become members of cabinet, in order to prevent the Prime Minister of the day from reaching back into the Senate and tapping John Smith on the shoulder and saying, "I have an opening in cabinet coming up and I've got you on the short

list." Then he taps John Doe on the shoulder, and pretty soon he has tapped a hundred-and-some senators on the shoulder and they are all on the same short list for one appointment, but in the meantime he has effectively co-opted the Senate to get his support for whatever measures he wants. So that is one of the roadblocks we want to throw in their way.

The second one is that if we cut off the purse strings of the federal political parties from supporting senators of the future, then it leaves only the party coffers of the provincial wing to support them. Therefore, they owe their allegiance first, last and always to the provincial interest. This is not in any way to affect the mainstream parties, but it allows again a separation of the interests in the Senate from the mirror interests in the House of Commons. All of our designs have been to separate them only so that the provincial interests can be clearly represented in the new Senate. We do not wish to change, as I said, the democratic principle of one person, one vote.

The second part of your question refers to a new economic union between parts of Canada. I guess that is really what you are getting at. I have had some very disturbing meetings in Alberta in the last six months since the death of the Meech Lake accord. I have attended six constitutional conferences in this country, including one at the University of Saskatchewan in Saskatoon, one in Calgary, one in Toronto the day the war broke out on January 16 and one at McGill University in Montreal, all of which seemed to have the unanimous opinion that Quebec is gone.

I disagree with all of them. I think what is happening is that there is a political, a business, an academic and a media elite in Quebec which would rather lead a Quebec nation than it would a Quebec province. I do not believe the people of Quebec, in the mainstream, wish to divide this nation. I think they want to remain a part of this country, but this elite class would like to get as much as it can out of the constitutional poker game we are playing in this country. I do not belittle them for that. I guess if I were one of the elite in Quebec I would like to get as much power as I could. That is only natural human ambition.

1130

My answer to that is, I do not see how we can have strong economic union in this country by having devolution of political power. I do not think you can expect the two things to happen. I think that is the main problem we are going to have: When we decide to divide up the political power in this country, by nature we will be dividing the economic power as well. So I do not see any major new economic strengths coming out of whether you call it sovereignty association or separation or anything else, and I do not see how you can devolve so much central power to the provinces that you make the national government impotent and without any ability to have national programs and make anything stronger in this country either.

The world is moving into stronger and stronger trading blocks such as the European Community and the free trade agreement with the United States. I do not see how we can divide this nation and make it stronger in any way. I do not see that happening.

Mr Harnick: I appreciate receiving your brief, which is certainly of great interest and very topical. The one thing I find difficult about it is that we are trying to determine the future of the Senate in a procedural sense without really understanding what the Senate, in a substantive sense, will be doing. Have you, in any of your development of this proposal, developed any ideas of those areas of jurisdiction that the Senate will have, or will it continue, in your view, to be a body of second sober thought?

Just to give you some idea of some of the things we have heard, we have heard that a Senate could potentially be the body that will ensure equality of national programs across this country, or that a Senate can be an economic body developing federal economic policy and dispensing economic policy. What substantive proposals are you making about the function of the Senate?

Mr Brown: I should have passed out a copy of *Western Perspectives*, published by the Canada West Foundation. I will leave your Chairman a couple of copies of it. It is a booklet, so it is difficult for him to have copied it for you this morning anyway, but it is a blueprint for Senate reform which was published by the Canada West Foundation in January of this year.

The actual roundtable discussion took place a year earlier, and we were a whole year in massaging the results of that roundtable. The participants were Gordon Robertson, a former member of Privy Council, and Dr Allan Cairns of the University of British Columbia. Premier Clyde Wells was a participant, as I was myself, and some other political scientist, Dr David Eltis, president of the Canada West Foundation.

This is a complete blueprint from what we expect from the Senate, but just to give you a thumbnail of it this morning, we see the effective powers of the Senate being what they are now. They have an absolute veto over the House of Commons on all issues if they wish to exercise it. They do not have the right to initiate a budget and they have only a six-month' suspensive veto over constitutional amendments to the Senate itself, and we would see that those would remain in power as much as possible.

What we really want is just simply this: that the House of Commons remain as the first cornerstone of democracy—one person, one vote in the House of Commons—but we want a counterbalance to that for the members of Confederation. What we are saying, very simply, is that the House of Commons will rule supreme as long as it has the support of at least a majority of the provinces, but when it does not, that piece of legislation will be defeated or amended. We are not saying that the Senate would necessarily just be obstructionist, that it would just get out there and decide it was going to defeat all the bills coming forward. It would either amend them or it could defeat them or it could initiate a bill of its own which was more in the interests of the majority of the provinces. This is really all we are saying.

To give you quick examples, the GST recently, in my opinion, would not have been vetoed by the Senate, but it would have been substantially amended. It would have been amended to more accurately reflect the interests of most Canadians. Number one, it would have been tied to legislation to reduce the national debt, which is I guess

now happening, but it did not initially happen when it was passed. It would have been simplified. It would have had fewer loopholes and been more fair. Other instances could be given, but it is difficult to sit here and say exactly how the Senate would perform in every instance.

But all we see is that when the majority of the provinces combine to say, "This is not in the interests of our province," or a combination of senators representing different provinces—they do not necessarily have to be six provinces that would be opposed, but that the majority. Another example would be the drug bill of a year or two ago, when clearly a number of people were concerned across this country about the changes in the drug act in this country. If a combination of a few senators from each province made a majority and wanted either to defeat that bill or amend it, then the Senate would have been able to do that. That is, I think, the easiest explanation I can give you.

Mr Harnick: You certainly answered my question. Thank you.

Mr Malkowski: Your presentation was very fascinating, the concept of the triple E Senate. Your point is to have the equality of provinces so that we can hear the provinces' voices. Related to the Senate election process, could you clarify who would call Senate elections? Would it be the same situation as a federal government? It is called by the Prime Minister. So who would do that?

The second point, you would say a six-year term for senators. Would the election process be similar to a federal election in terms of nomination of candidates and having it from all the parties or a non-partisan Senate? How would you explain the election process? Could you clarify those two points.

Mr Brown: First of all, the Prime Minister would have nothing to do with the call of the election for the Senate. The Senate would be on fixed term so that you would know when the election was coming. If it was six years, then every six years that Senate would be elected. The Senate would not be able to bring down the government. In other words, a defeat of a bill by the Senate would not be a vote of confidence, so the government would not fall. The piece of legislation would fall or be amended, but it would have no impact on the Prime Minister's election of his own House of Commons.

Second, it would be a partisan Senate, but only in the sense that all registered provincial parties and all independent candidates who wished to run for the Senate would be

eligible to run. The provincial party wing would be responsible for raising financial contributions to support those senatorial candidates. This would allow the Social Credit Party in BC, which does not have a national mandate, to run senatorial candidates; also the Parti québécois in Quebec and various other provincial parties that do not have a national wing. It would also include candidates from all of the mainstream parties and, as I said, independents. As much as possible, the elections would be run by the provinces, but the timing of them would be set in stone.

The Acting Chair (Mr Drainville): Thank you, Mr Brown. The work that you have done has been very important as we have looked at the future of our institutions in Confederation, and we thank you for coming before the committee. If you have any other information or reports that you could send to the committee for us to look at, we would greatly appreciate that in the future.

Mr Brown: Fine. I thank you again, and I will leave a copy or two of this *Western Perspectives: A Blueprint for Senate Reform*.

I would like to leave you people with one last comment that comes more from my heart than from my diplomacy, and that is that if we would renew the Confederation of this country, we must treat Canadians equally in all aspects right across this country, and I think that there can be no more fundamental characteristic that can unite Canadians than to know that the three principles of equality are going to be adhered to in a renewed Confederation.

I reiterate those three principles: The first is equality of all Canadians, regardless of race, sex, ethnic origin or any other individuality in a reformed House of Commons that truly represents Canadians and not partisan political interests. The second equality is equality of the partners in Confederation, regardless of their size or their population or their wealth or their lack of any of those, for the next hundred years we reform the Senate, not for the next term of somebody in office. The last equality is equality of the charter language community, with no preferential or denigrating legislation to promote one language over the other. Thank you.

The Acting Chair: Thank you, sir.

Are there any procedural questions before we adjourn? Okay, then we will come back here to the committee for 2 o'clock this afternoon. This committee is adjourned for now.

The committee recessed at 1141.

AFTERNOON SITTING

The committee resumed at 1407.

TASK FORCE ON CANADIAN FEDERALISM

The Acting Chair (Mr Drainville): I welcome Professor Julius Grey, who is coming before this committee for the second time, I believe. You have come a long way, so if we could look at the 40-minute, 45-minute mark and if you could provide time for questions as well that would be helpful.

Mr Grey: It is a pleasure to be here again. I am the president of the Task Force on Canadian Federalism, an organization based in Quebec which has appeared before you in Cornwall; we have appeared before the Alberta committee, we have appeared in a very stormy session before the Bélanger-Campeau commission and we are back here. I think your allotment of time is very generous.

I received from you seven pages of questions, which would be impossible to answer very quickly, nor could we prepare a new brief in the week in which we knew this was going to take place, so instead I have brought in a certain number of publications in which I have articles published. Most of them are in *La Presse* or the *Gazette*; one is proofs of an article that is coming out in *Policy Options Politiques*, another one is from there, and one is in a law journal. I think these articles tend to bring out some of the points I want to make and I will refer to a few of them.

The first point I would like to make is my total refusal to accept what I fear is a new concept growing in Canada, which I call "philatelic federalism." In other words, people go around saying, "As long as we save the name of Canada, as long as stamps keep coming out saying 'Canada,' then we have saved this country." That is just not good enough. For one thing, we may not have stamps next week, but apart from that—

Mr Ruprecht: Philatelic?

Mr Grey: "Philatelic" is the word I used, for stamps. People think that any concession you make, any Constitution you come up with, is good enough as long as stamps appear with "Canada" on them, that if you take out an atlas of the world published, say, in Germany or India you will see the word "Canada." Countries and borders change over thousands of years. If we look at a map of Europe 2,000 years ago, nothing is the same. If we are going to save something, then it surely is much more than a name, a stamp, a trademark or anything like that.

I think we have to ask ourselves what we are trying to save. I think we are trying to save a very good society, not a perfect society—there is not a perfect society anywhere—but a very good society which most people in the world today would like to live in. What are its essential characteristics? I know I will leave out a few and some people are going to be upset at one or another, but I am really trying to put first of all the things without which I think Canada would not survive, and second, would not be Canada.

I think bilingualism is an essential characteristic. As an aside, in answer to one of your questions, I will add that even if Quebec should leave Confederation, which I hope

will not happen, one should not use the francophones outside Quebec as hostages or take away their rights. That is an essential and important part of any Canada. Bilingualism is a fundamental characteristic.

The second thing I would like to stress—I think it is essential and it was not always the case; it was not so in 19th-century Canada, which may well have survived originally as a defence bulwark for the British Empire—today an essential characteristic of Canada is social justice. Some people might call it a compassionate society, other people use a word that has gone out of fashion in certain countries, which is "welfare state" and other people use all sorts of expressions for it. What we mean basically is that Canada as a society has not fully accepted and should not accept the extremes of American liberalism; it sees the need to redistribute to some extent the goods and services in our society, while maintaining a fundamentally free economy, and we do so very effectively. Canada has one of the best systems of protection anywhere in the world.

The third characteristic of Canada is liberty. There, I think, Canada does borrow from North America. It is clear that while we are a compassionate society, we are also one which maintains individual liberty at what I would call the American level. I do not mean only freedom of speech or freedom of press, because most European countries, including eastern Europe now, have that. It is more than that. It is freedom of choice for the individual, freedom to belong to any ethnic group or not to belong to it, freedom to develop in his or her own way, liberty in a much broader way, the freedom of movement and of social choice.

I think those are the three essential characteristics of this country: bilingualism, social justice and liberty. The question I would like to ask at this point is, can we effectively decentralize this country further while maintaining those three goals? The first point one would make, of course, is that Canada is already largely decentralized. It is the most decentralized of the major federations. One could also point out that very decentralized federations tend to be unstable. They either move towards greater centralism, Europe being an example moving towards greater integration, or they tend to fall apart over time if there is very little left.

Given the fact that we are already highly decentralized, I think we have to ask ourselves the following question: If you take into account the equalization payments right now, the federal government administers no more than 30% to 40% of the total budget of this country, depending on how you count it—substantially less than 40%, actually. If that is the case and if you decentralize further, will these structures of the federal government be economically viable? Will it be worth keeping this very costly and, especially because of the shape of our country, very lengthy communications thing for what are basically very few powers and very little administrative efficiency? Then there is the problem of simple efficiency.

But there is another problem. Could we resist US liberalism in a more decentralized state? One of the points I would like to make is that I think the economic and constitutional

issues cannot be separated. In the first article I gave you, which I wrote, "Le Canada seul offre un projet de société clair," I make that point to such a degree that I have even included in this package an article I published in 1988 opposing free trade, not because I think we can reverse free trade or that this is the issue we are now talking about, but because I think we cannot possibly keep out of the debate the question of what would happen. How can we have sufficient bargaining power to keep a different economy?

I think the point I made in the anti-free trade article is that in the long run, if Canada forms part of the same economy as the United States, people will want to join the United States for the very simple reason that if all decisions are made in Washington, then the very nature of patronage will mean that before every American election the senator from Ohio or the senator from Michigan will try to get jobs away from Ontario to give to his electorate, especially in a period of scarce jobs. In order to maintain Canada successfully over a long period of time, we would have to have sufficient clout in bargaining to be able to withstand that type of pressure.

Of course the first conclusion from that is that it is not only Quebec. Some people have said, "Let Quebec leave; Canada will continue." I think English Canada will not continue without Quebec either. I think it will continue for 20 or 25 years because our generation has been brought up in the consciousness of being Canadian and it is very difficult for us to say we will not be. For about 20 years we would maintain some sort of separateness, but as the next generation grows up and there is no economic reality to it, obviously the consciousness would fall.

The next thing I say is that the only way we can maintain sufficient clout—and even that is not certain, of course—is if a single economy existed, if the water of British Columbia, which is very much needed in California, the oil of Alberta, the industries of Ontario, the electricity of Quebec and Newfoundland and the industries of Quebec were part of a single economy that could bargain with our partners, friends, allies and those who oppose us. It therefore seems to me that from an economic point of view, any decentralization would be disastrous. We are already very decentralized and in a situation where we are, for the foreseeable future, in some form of partnership with something so much larger and much stronger. If we want to maintain a different economy and a different social structure from the United States, then we must remain united.

The first point is the economic point, but there are other reasons why I think decentralization will not work. I am very much afraid that in the fall the people who believe in a philatelic Canada will say: "We have to accept something like the Allaire report, a big giveaway of powers. You must accept this because if not, Canada will break up tomorrow." In desperation and fear people will accept that and the long-run consequences will be both the separation of Quebec and the weakening of the compassionate side.

I have included the article "Why save Canada?" which has not yet been published, where I point out that there are those who believe that weakening the central government might be an effective way of getting rid of the social programs they do not want and maintaining some sort of

shadow Canada afterward. Canada without the social programs has no long-term future.

So far, I think what I have said is particularly controversial in Quebec. Quebec has said it wants to do away with interprovincial trade barriers to keep a single economy. So far that is not the issue in Quebec, although I must say the demands of Allaire cut right across economic issues as well. If you took them all the way, they would be destroying the single economy. But the next point I would make is that when you are faced with a nationalist movement such as Quebec's, concessions do not work. There is not a single example in the history of the world where the ardour of a nationalist movement has been cooled by concessions to that movement. One of the best examples, if one wants to be esoteric, is the Austrian government's desperate attempt to play in favour of the Czechs against the German speakers in the Bohemian mountains. It did not stop the separatist movement; it did not stop nationalism.

1420

Nationalism basically feeds on itself and the reason why a nationalist movement will not be satisfied with concessions is, first of all, because the year after that, nationalists like Mr Parizeau and Mr Bouchard—even if one were to accept that Bourassa is some form of Liberal or federalist, I do not know—the people who want an independent Quebec would not go away; they would keep working. But there is an additional reason why they would keep gaining support and that is because the nationalist goals, the illusions of nationalism, do not bring an improvement in anybody's standard of living, way of life or anything else. A year later, two years later, those people who thought the apocalypse had come and everything would be wonderful, would be just as disappointed as before. It does not solve your employment problems. It does not solve gradual reduction in the standard of living or anything else. It would therefore be a natural thing, two years later, to say: "We did not get enough. It would have worked, but we did not get enough, so now let's start with the base of what we got and continue fighting for further concessions."

I have put in a couple of articles on that issue. "À quoi ressemblerait un Québec indépendant?" in which I pointed at a very bleak future, I thought, for an independent Quebec which would gradually, as the economy declined, go into xenophobia, blaming the minorities for its woes. It is a natural process. It is not because Quebec is any worse than anyone else but because, in all cases where nationalism has gone all the way, that has been the experience.

Secondly, I have included an article which is just coming out called, "French is in no danger in Quebec." The reason for it is that I think one of things that is repeated—and I am sure the advocates of philatelic Canadianism are going to come forward—is that Quebec must have the powers it needs to protect its culture. The point I want to make is that Quebec already has the powers it needs. Culture and language are basically provincial matters. The Supreme Court said so about language in the Brown's Shoes case. It is basically a provincial matter.

The only limitations on it are either the functioning of the federal government itself—nobody can tell the federal government not to be bilingual, and a non-bilingual federal

government would be a disaster across the country; it would be a disaster for the francophones—but secondly, the limitations on Quebec's powers within the area of culture and language have been only two: basic human rights—they have lost a number of cases in the courts based on the charter and so on, the signs being the best known one, and even there they had the power to overcome it through the "notwithstanding" clause. That is the first one. The second type of limitation is spending power, but spending power should not be confused with legislative power. It too is a check and balance.

I have given you an article I wrote about the Arpin report, the cultural report in which Quebec claims total and complete powers in the field of culture. That is very pernicious. That means they do not want The Canada Council or institutions like that to give money to Quebec artists, or writers or anything. They want all of it to be centralized, but there is nothing more dangerous than that.

In fact, in these areas, spending power acts as a check and balance and not even of a political or linguistic sort. Imagine that an avant-garde group gets control of one spending institution, and it is the only one, and no one who is not avant-garde can get funding for arts. Or, the other way around, some crusty old academicians take control of the art of a particular province saying, "That is it," and the federal government cannot spend. Spending is not the same thing as legislative power. Quebec already has all the legislative powers in the fields of language and culture.

There is one thing of course: communications; but there, even if one were to hand over some of the powers—because I am not against all changes, you could change some of them—you would have to protect the CBC because that is one of the basic institutions of this country. You have a number of institutions: the transport system, the CBC, the banking system, things that hold the country together. If you do away with all those things, if you allow the provinces to cut the links that bind them together, you will find yourself over five to 10 years with a totally independent and separate Quebec, having nothing in common. Quebecers have often complained they do not feel at home: They go to Toronto or Vancouver, it is not their country, they do not feel at home there. We should address that problem, make sure they feel at home. But cutting the links that bind is not the way to make them feel at home. It is a way to make those cities even more foreign.

Therefore, when you look at the Allaire report, what you find, I think, is a large number of powers which they claim Quebec already has, and where the real thrust is against the civil liberties side of things, which one cannot concede because, if we are going to have common standards, one of the basic areas is civil liberties. There is no way we can have one area of the country that does not have the same standards with respect to the charter or anything else.

And then you have a number of other powers that touch the economic issues and, in my view, those cannot be touched because in this common market that is the long-term end of Canada. If you do not have the separate economy, you do not have a country.

What then can be done? Because of course the reproach can be made that I have just said what we cannot do. Somebody is going to say, "But what can you do? If you do not give something next year, Quebec will separate." There is a little bit to be said against what every law student learns is the "Mutt-and-Jeff" technique of interrogation. Quebec's negotiations have been a little bit that way. Mr Bourassa goes out and says, "You've got to give me everything because if you don't give me everything Mr Parizeau will come in and he will take everything."

There would be something to be gained from saying that, but I think we also have to ask ourselves realistically, "How can we sell a Canada that is not decentralized, to Quebec?" First, I think there can be some constitutional changes. Any constitution after 125 years can be revised. There are some powers—immigration, for instance, could be; I am not going into details of every power, but immigration is one area where Quebec already has *de facto* powers. There is no reason not to recognize it.

There are some other areas, family law, for instance, where the original reason for having marriage and divorce federal was because of the fear that the strong Catholic lobby in Quebec would never stand for divorce. That fear no longer has any basis, so it may be a rational thing as long as we have an American-style understanding that each province must recognize the other's divorces. We could have that open.

In the same way, some economic powers should clearly be restated to be federal. There must be an end to all those trade barriers and everything else. We could have a somewhat restated Constitution. My position is not that we should not have constitutional reform, but that the ultimate balance between the provinces and the federal government should not be different from what it now is. You can move some powers one way, some powers the other.

There has been some suggestion that the federal government could fix the standards and that the provinces could carry them out. First, I worry about the viability of the federal structures in those conditions because of the economic problem: Is it then worth keeping this whole network of governments and so on? Second, I do not think it will work for another reason: Quebec will simply not accept federal standards in things like education. I noticed a comment by the Premier of Ontario in today's *Globe and Mail* that there must be a certain degree of common standards in culture and education. I think that will be just as hard to sell to Quebec as a federal structure and, therefore, I do not think we should simply set out the standards and let the provinces carry them out. I think, basically, we have to sell Canada to Quebec.

1430

There are many reasons for selling Canada to Quebec. One of them is, of course, that the Quebec media have so far been very delinquent—at least, one-sided. I would not say delinquent. For every article that appears defending Canada, you get 25 pointing out the deep injustices that reporters see in the federal structure. In order to sell Canada to Quebec I think people are going to have to go and campaign in Quebec.

What is to be said in Quebec? I think we have to call a spade a spade, not say, "We are going to give you everything," not act like so many politicians all over the world are acting right now, trying not to face the issues, but simply putting it in a way which is electorally acceptable for everybody.

I do not think there is ultimately an acceptable solution unless we convince Quebecers. The point we have to make in Quebec is that French is not endangered in Quebec. The great myth of Quebec nationalists has been that French is about to disappear. Mr Henripin, the demographer who first raised the alarm about French in the 1960s has now taken it back. He has published new studies showing that French is in no danger at all. I have given you my historical argument, which is coming out in *Options* this month, as to why French is not in danger. There have been articles even by Quebec journalists like Lysiane Gagnon pointing out that it is totally unthinkable that Quebec would disappear. There is not a single instance of any country which had a majority in one area and a free and compulsory education system, whose language has been lost. The examples of Louisiana or Wales where there was no free and compulsory education system simply do not work. There is no danger.

This point is being raised even in Quebec right now. Yesterday I picked up a book by the British historian Hobsbawm, *Nations and Nationalism Since 1780*. He dismisses Quebec nationalism in one page with the sort of statement that would have created a tremendous outcry if an English Canadian had written it: just a dismissal of the whole claim of danger to Quebec. I would not dismiss it in quite the same way, but I think the point must be made to Quebec that there is no way French is going to disappear. Indeed, since the 1960s French has made tremendous strides across the country, and must continue to make strides. One of the essential characteristics of Canada which people would not have said 40 years ago is bilingualism and the presence of French.

The second thing that must be pointed out to Quebec is that not a single country can be shown to have profited substantially from breaking up a federation. People are inevitably worse off, at least for a generation or two, and nobody wants to be sacrificed. The problem is made worse by the fact that many countries that walked out of federation—look at today's Soviet Union—had a real history of oppression and problems, but it is very difficult to argue that an average Quebecer faces any injustice, that his career is any worse in today's Canada than anybody else's. It used to be different and there could have been an argument made 40 or 50 years. There was an argument made, a legitimate argument, that things had to change in Quebec, but today it is obvious that is not the case.

The third thing that I think has to be said and said firmly is: We do not want Canada to break up. And if we do not want Canada to break up, we are not going to co-operate with those who are working for that goal. We are not going to guarantee in advance a common currency, a common market or anything else. We are not going to say in advance, "We'll make it easy for you if you choose that." I think the answer is: We want Quebec. Quebec was

not rejected during the Meech process. The Meech process was a series of accidents, and in many ways flawed. The difficulty with Meech was that, at a time when everybody should have discussed a few clarifications, they just got their backs up and hissed at each other.

The thing that goes together with the devotion to Quebec, the love of Quebec that Quebecers think does not exist in the rest of the country and that must be expressed, is an unwillingness to part with Quebec. I think that point must be made clear to Quebec. But who is to make it clear in Quebec? I think English and French Quebecers who believe in Canada, and English Canadians and French Canadians from outside Quebec, must come to Quebec to campaign. This has never been done before. We have allowed this sort of media screen to dominate the debate in Quebec, giving it a totally skewed, one-sided view: "We've got to get concessions—country doesn't work—everything's got to be changed from the beginning—if we don't have a new Constitution by next year, we're getting out of it."

What if the Premiers of the other provinces were to go from city to city, from meeting to meeting, in Quebec and explain the vision of Canada; point out the economic dangers of having different units face the United States, the real difficulty with the social programs; point out the successes of Canada, the fact that the rest of the country has not rejected Quebec, that the narrow nationalism that has come out of Quebec is really an old-fashioned thing, something that dates back to 19th century Europe, or first half of the 20th century, that has no place in a modern, open, free society; that while Canada has changed tremendously and should change some more with respect to reinforcing the role of French in the whole country, Quebec must also make some of the changes, the changes are not one-way. It is not that one place has been wronged and concessions must be made to keep it there, but that we must ask ourselves: Do we want this country, the basic elements of this country? And if we want it, then we must do the things that are necessary to keep it going. I would like, before passing over to the questions, to go through some of the articles.

I have given you two articles that I did not write. One of them, in this Saturday's *La Presse*, is by Marcel Adam, one of the most federalist commentators in *La Presse*, pointing out that it is very difficult for a federalist to be optimistic. Whatever happens, whether we accept last week's by-election as a true measure of what Quebec thinks—because there are all sorts of things and a by-election is just a by-election after all—it is nevertheless clear that if things go the way they are going, sooner or later, in a year, in two, four, eight, the opposition in Quebec will be in power. That is the nature of things.

The opposition in every democracy eventually comes to power. Making concessions when you expect to be dealing with that opposition in the future is simply weakening your position to begin with. What I would suggest to you is that the way to win Quebec is to make that option totally unviable. There is one country in the world today where the present main opposition party will never come to power. At least not until it has abandoned its principal option. That country is Italy. The main opposition party, with its 32% or 31% or 26%, whatever it is, will not come

to power because its option is *so passé*. It might have 20 or 30 years ago, but today it is *so passé* nobody believes in it—they themselves do not.

The same thing will have to happen sooner or later to the sovereigntist idea if Canada is to have a stable existence. Not that the party would disappear. But the idea of sovereignty must not be on the agenda every four years. No country works with a four-year plebiscite on its continued existence. That simply means that sooner or later in a bad year, in an economic crisis, the country will fall apart.

Given the fact that I think Marcel Adam is right, that making massive concessions in the jurisdictional area will simply be a prelude to separation, I would suggest to you one situation in which making such concessions would be justified and that is if we thought that Canada is bound to break up no matter what. Then it would make sense to do it over 10 years, to have a slow letdown in order not to have an economic jolt. But anybody who wishes to maintain Canada must argue against a massive decentralization of powers, against removing the federal government from all funding or from anything else, and against the idea that we are going to have two totally different Canadas.

The other article is from the *Globe and Mail*, pointing out the federal economic strategy for decentralizing. I think there is a connection between the extreme liberalism we sometimes see in the federal government and the decentralizing. One of the purposes for trying to weaken the central government is to attack the social programs and the type of Canada we have known, the Canada that people like, that all three parties, really, built up. Because it can fairly be said that for a period, 1950 to 1980, all three parties differed about the speed of changes but were basically creating this compassionate society. The compassionate society owes a tremendous amount on the one hand to Woodsworth and on the other to Trudeau and perhaps even to Diefenbaker. But there is a connection to be made between extreme liberalism, the free trade movement, and the attempt to decentralize Canada. I think it would be easier to do these things without a strong economically powerful central government.

1440

The other thing I wanted to discuss is the notion of a distinct society. Should we recognize it? My answer is, yes. The reason we should recognize that Quebec is a distinct society is not because it needs special powers but because as a sociological thing of course it is different. It may be that Newfoundland is also a distinct society in some ways, if it were to want to be called a distinct society, as is British Columbia in certain ways. But Quebec has a more immediately visible difference: You arrive in Montreal or in Quebec City and it clearly is different. There is nothing wrong with recognizing it.

The logical error of Quebec nationalism is to assume that because you are distinct you need different legislative powers. It does not follow. It does not follow that you need asymmetrical federalism or anything like it. But I think all Canadians should recognize, first, that Quebec is different, and second, that Quebec has a role in assisting and promoting French across the country.

I think the presence of a strong, what we call a "foyer" of French culture permits us to generate the funds, the educational material, and so on that makes French viable across the country. The recognition of Quebec should be given right away and it should not depend on a deal with Quebec. We should simply recognize, all Canadians should recognize, the distinctiveness—indeed the precious distinctiveness—that Quebec brings to Canada. Because I think that without Quebec there is no Canada. Without bilingualism, there is no Canada. It is one of the things that is essential.

We should not go for asymmetrical federalism. There is a distinction to be made between recognizing Quebec's differences and asymmetrical federalism. Going against asymmetrical federalism and against weakening the economic union cuts out massive opting out or any of those things. I think the answers follow from what I have said.

The articles that you have, other than the ones I have commented on, deal with the essentially reactionary and narrow nature of modern Quebec nationalism. To put it bluntly, many Quebecers are I think barking up the wrong tree. They should be looking for solutions to social and economic problems. The article entitled *Why Save Canada?* has not yet been published. It reflects much of what I have told you today: the need to maintain the union to a large extent; yes to Quebec, no to its extreme demands; in other words, the need to reassure Quebec without giving in to the legislative demands.

I think we are facing the moment of decision. If nothing is done we will either let the philatelic Canadians do away with Canada and then watch a 10-year or 15-year decline until we all say we had better join the United States because then we would at least have a vote about the economic decisions. It could reasonably be argued that in 15 or 20 years we could affect it in some ways. Just think about it. If you added 25 million people, of whom 20 million voted and 17 million would vote Democratic, you would possibly change the United States. We do not want that right now, but that is what would probably happen over 20 years if we decentralized.

The other thing to do is to let Quebec separate. I think that is an even quicker way for Quebec to become both totally provincial and marginal, a Puerto Rico, and for the rest of the country to become states in the United States. The one thing that must be done is an overture to Quebec and a campaign in Quebec. What we need is people with courage to call a spade a spade, to go to Quebec and to call it that in French. To say: "That is what the situation requires. We are here to tell you why we want you to stay and why we are not going to make it easy for you to leave. Nor are we going to make it easy for our own rednecks to do away with French or anything else. We are here to defend Canada and the three essential elements in Canada." That is the message.

Mr Bisson: I would like to thank you for your presentation. It left a lot to think about and challenges some of our views on the particular issues. Just a couple of quick points, and I have two specific questions.

One of the points you made was about the media. For every one article written within the Quebec media in regard

to Canada, 26 of them are against a stronger federal government or a better presence within Canada. I would say that, to the opposite, the same is true here. We have seen the incident in Brockville a few years back. I think there has not been a real opportunity for the media to do some real education around this issue and get people in Canada, inside and outside Quebec, to appreciate what this country is all about and what it has to offer.

You made the point, and it is a crucial one, that no one ever tried to sell themselves to Quebec. I would think that is what happened in the last referendum. Mr Trudeau, then Prime Minister, travelled extensively through Quebec, along with many people from his cabinet and people on the pro-Canada side, to talk to Quebecers about the benefits of staying within Canada.

The difficulty we find ourselves in now is that for a number of reasons, including what has happened in Quebec and how people feel about their governments because of economic situations or whatever, quite frankly people do not trust us. The average Canadian on the street looks at politicians at the provincial or federal level and says, "I don't trust you." And they are not willing, or maybe do not have the opportunity, to get into that dialogue with the citizens in Quebec or, for that matter, within their own provinces. Many, many politicians at the federal and provincial levels would love to be able to do that. On the other hand they also have to convince people within their own backyard of some of the things that you talked about. Can you shed any light on that?

Mr Grey: When you talk about the media here, I agree with you. I always maintain, and I think you will find it consistent with what I have written, that my criticism of Quebec is a criticism of nationalism in general. It is not a criticism of Quebec. I love Quebec, and I think Quebec is no worse, that it follows the same rules. For instance, I have always maintained that if the French had won the Seven Years' War, and Massachusetts had, because of its strength, retained an English minority, you would have exactly the same problem and same type of Bill 101 and Bill 178. It would be just as wrong. People tend to behave in certain ways for various reasons, and the media are the same in both parts of the country.

I would stress that there is one thing Ontario could do and I want Ontario to do it: that is, to disallow all the unilingual municipal resolutions, pass a law preventing such a thing as happened in Sault Ste Marie. I do not understand why it did not do it in 1986-87. I know you might have a problem with that. Sault Ste Marie, after all, does vote, does return a member, but of course that member voted against the resolution. I think, in particular, the present government could do it more easily because it does not have to worry about, say, the Orange vote, which it does not get anyway.

When you pointed out that people are afraid of their own backyard, I think the moment of courage has arrived. I think the time has come not to have politicians but to have statesmen, to rise above the partisan, to risk losing a seat or two, or to risk displeasing portions of the electorate. One of the problems with the whole country, and all countries in the west, right now is that the fine developments in

political science have allowed you to poll everything. You know that if you say this you are going to lose four seats there, and if you say this you are going to lose three seats there. Everybody can exploit it. The time has come to have a certain amount of courage. One has to risk that.

Ontario could immediately, because of the amount of publicity the Sault Ste Marie thing got, create a tremendous amount of goodwill by passing a law making it impossible for any municipality to do that in the future. You would not be hurting anybody either. After all, that was a symbolic thing, whereas in Quebec, say, the Rosemère thing was real.

About politicians, you are quite right. I think politicians, and I mention it in one of the articles, are in disrepute all over the world. I am saying it to politicians. It is unfortunate, but it is true. The things I say in "Why save Canada?" are so. I particularly doubt the capacity of some of our federal so-called statesmen to sell anything to anybody any more.

1450

But that does not mean people should not try. I think particularly the provincial leaders of the other provinces would be taken seriously in Quebec if they spoke French and so on, but I would say further that I do not think the delegations campaigning in Quebec should be limited to politicians. Where are the artists, the athletes? What about people like Margaret Atwood, people like Robertson Davies? What about people like Mordecai Richler, who lives in Quebec but who has made a few sardonic statements that were given wide currency all over Quebec? With his wit, of course, he hit the point home, but why does he not go on a campaign to point out why he is doing that? What about people who are scientists and so on? There is no reason to limit this campaign to politicians.

It is a twofold answer: One, it is time for politicians in Canada to become statesmen in the crisis; and two, it is not only for politicians, it is also for other outstanding Canadians to join. Politicians could perhaps organize it, but when the delegation went to Quebec to speak, it would contain all sorts of non-political people.

Mr Ruprecht: I enjoyed your presentation. I found it of real interest, because I essentially find myself in agreement with it. I do, though, have two questions. The first point I want to make is that I think you are absolutely right: The moment of truth for us has arrived, we must come to some kind of an agreement with Quebec. We will be unable to stay in a country called Canada if Quebec secedes.

You said that the whole nationalist movement in Quebec will not be happy with concessions, and yet you are essentially making a number of concessions. One, you said, "Let's give them *de facto* power over immigration"—which they already have—"let's make concessions in terms of family law and provide them some economic powers." I would like to see how you can explain the differences, as I see them, on the one hand saying, "Let's not provide concessions, they don't work," and yet you are willing to make some concessions.

On the other hand, I have another point to make in terms of your "distinct society" clause. We as cabinet ministers

at the time of Meech Lake were told that our job was to assure the residents of Ontario that the "distinct society" clause was not much, simply a symbolic gesture that Ontario would make towards Quebec, and that essentially it did not mean very much. Then of course we found out what happened, Bill 101 and other surprises. That is why when I hear you saying that we should again make some symbolic gestures in terms of a distinct society, because it does not mean much, there are no extra powers that Quebec needs—those are your own words—I am wondering how you can come to some kind of a consensus on that point.

Mr Grey: First of all, I am not talking about concessions. I never viewed the changes in the Constitution as concessions. I merely say that every constitution can be usefully amended after 125 years.

My amendments go both ways. On the one hand, I would concede, say, immigration and family law to the provinces for a number of reasons. I think immigration has lousy results in the provinces, but unfortunately I think it is de facto there and there is no point pretending constitutionally that it is not. But in exchange for that, we shall have stronger economic powers to deal with interprovincial trade barriers and so on. In other words, it is a modernization. Every constitution can be amended. The United States' Constitution had to be amended a few times to get rid of slavery, to allow an income tax, and it was very unfortunate that they could not get the equal rights amendment for women in the United States.

All I am talking about is, use this opportunity to bring it up to date. It is not a concession at all, because it goes both ways.

As for the distinct society, you are quite right. I was against Meech Lake. My point about Meech Lake was its extreme vagueness, and I think one of the death blows to Meech Lake was Bill 178. How can you assume that the matter is settled when you pass repressive legislation of this nature?

What we are talking about right now is something else. One should recognize two things: that Quebec, and perhaps other places if they wish to be so recognized, are, as a sociological matter, distinctive. Meech Lake would have been fine had we had a clause there saying, "Nothing in here derogates from the Charter of Rights." It would then have been a declaratory one. The problem with Meech Lake was the lack of clarity. What I am suggesting to you is that we can recognize the distinctiveness, but in such a clear way that nobody could possibly interpret it as a license to discriminate either for or against francophones across the country. All I am saying is that we can recognize the sociological fact that Quebec speaks a different language, that it has a different culture, but as long as we make it clear that this specifically does not involve additional powers, which is what Meech Lake did not do, then there is no risk.

This would be basically the answer to those two questions. The first one is that it is only what you would call in French a "remaniement," a modernization, a change of powers but without a net winner or net loser, simply to bring it up to date. The second one is that we should not pretend that everybody is exactly the same when they are

not, as long as we make it clear that no special powers are being given for that.

Mr Harnick: You have indicated that the concept of selling Canada to Quebec is, in your view, a paramount procedure that we should be going through. At the same time, you indicate that you believe there has to be some recognition of a distinct society.

I put it to you that if you want to be practical about this and you want to sell a constitutional package that people understand and is palatable, we have to sell Quebec to a great many Canadians outside the province of Quebec. It seems to me that when you refer to things like Bill 178, and at the same time the distinct society, the contradiction in trying to sell Quebec to some Canadians becomes so obvious. It seems to me that, if you want to bring this home and solve the problem we are in, we have to have Canadians understand the position of Quebec. We have to understand why a distinct society is necessary, and in order to do that, we have to be able to demonstrate to Canadians outside Quebec that minorities in Quebec are not going to be forsaken by a "distinct society" clause. That kind of explanation seems to be lacking, virtually from every witness we hear from Quebec. No one will say, "Look, the 'distinct society' clause is something we need to sell a constitutional package to the province of Quebec, but at the same time, minority language rights and minority rights generally in Quebec are not going to be forsaken, and that is something that Canadians have to understand." What can you tell us about that?

1500

Mr Grey: I think you will find an awful lot in what I have submitted to you that says exactly that. I have an article that I published in the Toronto Star called "Bourassa Proposals Pose Threat to Minorities." There is one about "Strong Language against Nationalists is not Anti-Quebec" that came out in the Gazette, and you have another one about "Anglos as the Best-Treated Minority Doesn't Add Up." I point out that Quebec has not been fair over the last 20 years, that Quebec's claim to being so generous—well, anybody who claims to be so generous is always very suspect. It should be the recipient who says that, not the giver, and that is all over the world. Anywhere you look, national claims of generosity are always somewhat suspect both ways.

But I agree with you. I think Quebec nationalism is one of the problems. When we are selling Canada to Quebec, one must point out to Quebec the difficulty of the rest of the country swallowing that type of nationalism. I think there are two distinct—the word "distinct" comes up all over—there are two sides to it.

There are some people, unfortunately, in the rest of the country who simply are a vestige of the old Orange sentiment, who do not like French, who would like Canada to be unilingual English, who do not understand why Quebec would keep a different culture. Those people simply have to be demonstrated to be a minority, a very small minority, no more than the visceral anti-English people in Quebec.

The other problem is that Quebec must do away with Bill 178. All I can tell you about Bill 178 in itself is that I

am the lawyer for a group that has now received permission to present it to the human rights subcommittee of the United Nations, which binds Canada. We got past the first stage and we are now going to be permitted to make the argument that Canada should be ordered by the international justice system to do away with Bill 178. That would be one way in which the matter could be resolved.

But of course there are other problems. We know that Quebec is the one place, for instance, where public employment is not available for members of the minority, not yet. Quebec has made some admissions on that score in the last year. There appears to be a certain growing realization. But I do agree with you that one of the problems is nationalism. I am not saying we must give Quebec its distinctiveness and then let it do whatever it wants inside. I think the distinct society must function fully under the charter; and one of the common standards which is essential, the third principle that I gave you, liberty—after the compassionate nature of the society and the bilingualism, the third one is liberty—Quebec must conform to that one too.

I think we are in fundamental agreement, and if you read what I wrote, we definitely are. I will tell you that when I come outside Quebec, I argue for recognizing Quebec's distinctiveness. When I argue inside Quebec, I tend to go much more head-on for the nationalism and the narrowness of Quebec. But I think both of them must be recognized.

Mr Harnick: Who else makes up the Task Force on Canadian Federalism?

Mr Grey: We have a large number of people. I will give you a number of names. As with politicians, we have perhaps an oversupply of lawyers: Mr Roger Comtois, the former dean of law at the University of Montreal; Mr André Casgrain; Monty Berger, a communications person; Mr Morton Brownstein, the man who originally challenged Bill 101, and that led to 178. We have a mix of English and French Quebecers, an imbalance of lawyers, but all sorts of people anyway.

Ms Carter: I agree with most of what you are saying, but there is one problem I had in the earlier part of your presentation. You said that Canada needs to stay together so that we can deal in a united way with the USA in marketing our things, like electricity and water from BC and so on. That is the idea I want to challenge, that our concept of the future of Canada is based on the idea of Canada as a resource-exporting country, because it seems to me that puts us in a Third World category. When you export these things, you usually do not get back the real value of what they cost you in environmental and other terms. I think somebody said earlier today in a presentation that our real wealth is our people and that we should concentrate on making sure we have a highly trained workforce that can do things that are going to bring wealth into this country.

Mr Grey: I certainly did not mean to say it is for the purpose of export. That is only a short-term thing. If we were being threatened, one could say we will not send you—but normally, no. But I think one should understand that in a much broader economic way. First of all, I mentioned

Ontario industry and other things like that, and high tech, but I would also say that, for instance, the possession of all of those resources permit us to have things like the national energy program, which might, for instance, allow us to have a double-tier price system for energy to develop Canadian industry. In other words, it might allow us to have countervailing force against free trade. The United States has all sorts of countervailing things; we do not.

I find myself in a difficult position defending an economic system based on free trade, because I still do not believe in it. I think I was right in 1988. I believe it does not really work in our interest, to our advantage, whatever we do. But I would say this: The unified economy is not for the purpose of selling the resources but for the purpose of using the resources. They can be used in all sorts of different ways when properly planned. Of course it will not mean that we will be only selling the resources. I would hate to see that happen to Canada, and I do not think we would be able to keep up the social programs as a Third World exporting country. We would keep them up only if we have the greater wealth generated by the judicious use of the resources.

Ms Carter: I have a particular problem with the James Bay developments which, of course, are partly done and partly to be done. I think if I have a bone to pick with Quebec, that is what it is.

Mr Grey: I would say that environment is one of the things that must be federal. Quebec's statement that it will not allow a federal review of environmental things is simply not reasonable. That part, surely, is something that has to be dealt with across all borders. In fact, let's co-operate with the UN on environmental matters if we can. But certainly I would agree with you on that one.

Mr White: Just a couple of small questions, Mr Grey. I much appreciate your contributions. The issues of a distinct society; what powers are intrinsic in that; economic issues; the overview of the last 30 or 40 years as well; the definitions, what it is that makes up our community, compassion, bilingualism, liberty. Some of those things are implicit; some of those things are very clearly outlined. Bilingualism certainly is—unilingualism, in certain areas; liberty, certainly with the charter, in terms of legal protections, at least. Compassion is not. You point out a period of 1950 to 1980 when a large number of programs were developed that really defined what our community was. I think implicit in that is that in the last while, those programs have been somewhat desiccated.

I would think, from many of the presentations we have heard, it is important to make statements about those kinds of programs and that kind of compassion as part of a constitution, as part of a vision of what we are as Canadians. Implicit is a recognition of certain social and economic rights within a constitution. I am wondering, from your experience in Quebec, how you feel those kinds of issues would be felt within the province of Quebec, how they would be responded to.

Mr Grey: Those things have to be in the Constitution, those things are essential. I have tried to be non-partisan about it. I realize that it is much easier for these matters to

be dealt with when speaking to New Democrats and Liberals than Conservatives, because for the last seven years, the Conservative Party has been more liberal in its orientation in Ottawa. Although I think in the 1950s, 1960s and 1970s, all three parties were working in the same direction.

But what I would say about Quebec is that nationalism, by its very nature, tends to be conservative all over the world. That is something Mr Hobsbawm pointed out as well. Ultimately, there are brief periods when nationalist movements appear to be progressive and reformist, but in the end, they are almost always used by those who do not want to discuss the economic question, because if you do not want to deal with the economic issue, what is easier than to say, "We, as a group, are fighting for our national ideas."

Quebec has been extremely conservative since 1973 or 1974, I would say. There was a short period at the beginning of the Lévesque government when they passed a few—I am very much an admirer of the *Loi sur les normes du travail*, which I think was a very good law. But on the whole, Quebec is today conservative. Quebec is a society in which the heroes are the entrepreneurs, and the great tragedy is, if one of them goes down, it is a peculiar type of short-term blinding to the other issues.

1510

My theory is that there was a time when Quebec was working to build exactly the same type of society with the rest of the country. That was the Quiet Revolution. The Quiet Revolution certainly restored French to its rightful place in Canada and in Quebec, and I am a great admirer of that revolution. Although it has been seen by many as a beginning of the nationalism—Lévesque was in it and so on—I think quite the opposite. That was the time when both Canada and Quebec were working in the same direction in the creation of a better, more open, more just, more compassionate world.

One of the arguments I have with Quebec nationalists today is that it is people like myself who are the true heirs of the Quiet Revolution, people who were children then or teenagers. I want to go back to the ideals of the Quebec that I remember of 1963, 1964, 1965, which was breaking with Duplessis, breaking with a period of narrow nationalism. Exciting for French, yes, across the country, but not in this narrow way. I think the social issues will be easier to sell to a Quebec which departs from the narrow nationalists.

The Acting Chair: Professor, thank you very much. You have provided us with a very full verbal brief today with all the documentation that you have brought to us. You have helped us a great deal. I thank you also for your very quick responses to so many questions.

Mr Grey: I would like to thank you for having heard us, and I would like to see all of you in Montreal debating this in front of the Quebec media and showing how close Ontario and Quebec really are and how wrong those people who think that Ontario turned its back on Quebec are.

The Acting Chair: I would ask Professor Schwartz to come forward, please.

Mrs Y. O'Neill: Mr Chairman, as Mr Schwartz is coming forward, I wanted to question the timing this afternoon. I am wondering why one presenter is being given

only half an hour who is quite an outstanding servant of the province, and everyone else this afternoon is being given an hour.

Clerk of the Committee: The scheduling was prepared on the instructions of a half-hour for each of these individuals. They were allotted the time shown. I was unable to schedule anybody for the 2:30 slot or the 3:30 slot. Each of the two presenters this afternoon requested that they be allowed, if possible, additional time. If I had been able to find anybody else to fill those slots, I would have, but I was unable to.

Mrs Y. O'Neill: I hope that when we get to the third presenter this afternoon, we will have some latitude, because I think this person serves the entire province in a very high profile position, and I think somebody looking at the schedule would get a very funny interpretation. I accept your explanation, but it is very hard to explain with just a piece of paper to present.

The Acting Chair: Let me be very clear, then. As far as I am concerned, we can stay as long as the committee wants to in response to questions and answers with Ms Frazee. There is no problem as far as I am concerned. We have had one cancellation as well. Mr Slattery will not be with us, so that gives us more time to question Ms Frazee.

Mrs Y. O'Neill: Thank you.

BRYAN SCHWARTZ

The Acting Chair: I want first of all to welcome Professor Schwartz from Winnipeg, Manitoba. It is very kind of you to give us a little bit of direction in terms of our deliberations on these very important issues. As you know, because there is no one on the 3:30 time slot, we do have some flexibility with time. It would be helpful if you would give us a good piece of time so that we could question you about some of the things that you raised in your deputation.

Dr Schwartz: My name is Bryan Schwartz. I am a professor of law at the University of Manitoba. First, to alleviate what is probably the greatest anxiety in the room, I will try to conclude my formal remarks as soon as possible and leave as much time as possible for questioning. With respect to whom I am representing, it is funny you should ask that because one of the points I always try to get across when I go to these things is that I am here as an independent academic, and I think it is very important that my particular segment of society try to contribute our own strictly independent, non-partisan views, which I will get to in a moment. I myself have advised governments from time to time, but I think when we speak at forums like this, it is extremely important to call it as we see it.

I think it is very unfortunate that one aspect of the Meech era has been the extent to which academics have not been available to provide you with independent, forthright, courageous advice, but are working for this special interest group or that government, and one has to have a good deal of scepticism about the sort of candour and the forthrightness of the advice you are getting.

Just to give you a little bit more background, I have been a student of Canadian constitutional reform for some

time. I was a participant, as a government adviser to three or four different governments, in all the constitutional processes from patriation right through the last Meech round. So I have had some opportunity, not only as an outside academic observer, but as a participant from time to time, to see what is going on.

I have written a number of books in this area. One of them, which your predecessor committee was kind enough to order, was called *Fathoming Meech Lake*. I also wrote a book on constitutional reform with respect to aboriginal people. It is called *First Principle, Second Thoughts*. What I have provided you with is a collection of some of my post-Meech writings.

In these remarks, I want to focus on the question I was specifically directed to, which is the amending formula, and then just highlight what I have said about this other stuff very briefly. If people want to pursue it, I will be very happy to, but it would not be my intention to orally review all of this material. Of course, it is stuff I am very concerned about and I would not be at all displeased if people did pay some attention to it, but I will leave that up to the individual interest of members of the committee.

I was very honoured to have been invited here. The fax expressed a special interest in my speaking to the question of the amending formula or amending process. I submitted a comprehensive brief to the parliamentary committee on the amending formula—that is known as the Beaudoin-Edwards committee—and I have included that in my material. I cannot even deal with all the issues there.

Let me just focus on one point I would like to get across which is, in a nutshell, that consultation is not consent. There is no substitute for binding referenda. You can have forums like this in which you ask people what they think, but my experience and the experience of the Canadian people is that the only way you can guarantee that the wishes and aspirations of the people of this country will be respected—not paid lip service to, not condescended to, but respected—is to give people the last word. You can conduct all sorts of hearings, and I have seen it done, and it may not have the slightest impact on the outcome.

Let me speak a bit from personal experience. This is about the seventh committee, I believe, that I have appeared before. Largely at my own expense, I went out to the New Brunswick hearings. By the time the report was issued, the chairs of the committee, I think, had been removed and replaced by other people. The final report did not even accurately reflect what the objections to the accord were. What emerged was basically what Premier McKenna obviously would have arrived at with or without public hearings.

Mr Ruprecht: Interesting comment.

Mr Schwartz: I appeared before the Beaudoin-Edwards committee. Before the Beaudoin-Edwards committee issued its report, the federal government had already announced what the process was going to be, the supercommittee.

I appeared before Spicer. Before Spicer was issued, we were already told what the process was going to be. In fact, since the Prime Minister, without consulting the other

party leaders, appointed the members of the Spicer commission, it was possible to predict pretty much what was going to be in the report. In fact, I did, in writing, and I think my prediction, which was issued four or five months before the report was issued, was pretty good, right down to predicting which buzzwords would emerge.

I appeared before the Charest committee. A unanimous report, actually in some ways responsive to what people had to say. A couple of weeks later, Lucien Bouchard resigns and the Charest report ceases to exist for any practical purpose.

1520

I think the report that your predecessor committee did had some merit to it. I did not agree with many of its conclusions, but I think it made a better effort than most to at least try to acknowledge difficulties. Your predecessor committee was very clear that the public demanded consultation, but what happened at the end, what happened after three years of people saying, "There ain't going to be any more Meeches, never again"? I was there in June at what I call the Stockholm-syndrome meeting in which premiers were once again closeted in a room, once again forced to make decisions under tremendous psychological coercion. What ever happened to the three years of people going to committees and saying, "The Constitution belongs to us"? What happened to, "Never again"? It happened again.

I do not think politicians should be bound strictly by what people say at these kinds of forums and I do not think that just because the majority of people say something, you have to agree with it; or that if the majority of people say something in these forums, that makes it right. But on the other hand, I do not think that what parliamentary committees decide ought to be the authoritative voice on what we do with our Constitution. It seems to me it is a first principle of democracy that when you make fundamental and irrevocable changes to the nature of this nation, the people get to decide. Why not? Let me deal with some of the "why not's" I have heard.

First is the parliamentary system. Ours is a parliamentary system and therefore politicians will decide and people will not. One of the whole ideas of a parliamentary system is that yes, you can make these decisions and the next Parliament can reverse them. Sure, you have a system of accountability. You can make decisions and then, if the people say, "Throw the bums out," and they do, they can reverse the decisions.

With constitutional reform what you do is, for all practical purposes, irreversible. This is not a pendulum when it comes to constitutional reform. The pendulum does not swing back and forth. There is no practical possibility, for example, that once there has been decentralization, this pendulum can ever be reversed. Can you imagine 10 provinces agreeing to transfer power back to the federal government? It is not going to happen. So we are talking about changes that cannot be undone, even at elections. Of course, even if we get to elections, who has promised us we are even going to have an election before this next constitutional package goes through? I do not think anybody has.

Even the creators of the parliamentary system we talk about, the people of Great Britain, recognized that when you are doing something structurally fundamental and

practically irreversible, you consult the people directly. That is what Great Britain's Parliament did with respect to entry into the European Community. That is what they did with respect to devolution of powers to Scotland. If you are citing the parliamentary system as the reason not to have a referendum, the parliamentary system is based on a system of electing people, giving them power and, if you do not like it, throwing them out and reversing it. That does not apply with respect to constitutional reform.

Why not consult the people? It is said: "We can't consult the people because we don't want yes/no decisions. We want to be able to consult and adjust things and play around with things until we get it right. You can't do that if you've got thumbs-up/thumbs-down referenda." Of course, everybody is in favour of adjusting things, compromising and consulting, but the bottom line is that sooner or later there is going to be a ratification point. Sooner or later the legislatures have to vote yes or no. Whatever package emerges from this and comes to this Legislature, it is not going to be, "You want to adjust this clause," it is going to be yes or no.

There is a yes-or-no point, and I say that yes-or-no points should be left with the people. The fact that the people get to decide the bottom line is going to very much encourage people to compromise, to consult. Who wants to face the people and then be told, "Get lost"? The fact that at the end of the day you have to face the people, it seems to me, is going to encourage a spirit of accommodation and compromise.

Then there is, "The people aren't smart enough or enlightened enough. Sometimes politicians have to make courageous decisions," or "Sometimes politicians have to look after minorities," or "Majorities cannot be trusted to protect the rights of minorities," or whatever. When it comes to questions of minority rights, some majority is going to decide. Again, the question is, is it going to be the majority of people in the Legislature or is it going to be the people? Do we have reason to believe from recent experience that legislatures are more sensitive, more enlightened about minority rights than the people? It is hard to say about the people because they have never really been asked.

I cannot guarantee it, but during the Meech round I did not see a great deal of sensitivity to minority rights. I did not see a lot of people terribly worried about what was happening to the future of self-government in the Yukon and Northwest Territories or the rights of anglophones in Québec. It was not such a problem, was it? Was anybody too terribly concerned about the effect of the spending power clause on the future of social programs? Some people were, but apparently not enough politicians to make any difference.

On the other hand, I think that if politicians of this country trusted the people enough, they would be pleasantly surprised to find that the people of Canada are actually quite well informed and quite tolerant. The prospects of achieving a state of reconciliation and amity are considerably better if people have chosen solutions for themselves rather than having them foisted upon them by people who purport to be somehow more enlightened.

The people of Canada will eventually support some form of aboriginal self-government. They will not support

a state within a state, but they will support some sort of reasonable federalist accommodation. They will be a lot more happy about supporting it and financing it and living with it if they have been given the opportunity to approve it rather than thinking, once again, "These guys are forcing this down our throats whether we like it or not."

With regard to the idea that not consulting the people avoids a division, I do not quite understand the reasoning here. Is it that you are going to force through some sort of package which, if put to the people, would cause division? That is how you avoid bitterness and confrontation? You do something anyway even though, if you had put it to the people, they would not have accepted it? It does not make a whole lot of sense to me.

The Acting Chair: Could I interrupt just for a moment, Professor?

Dr Schwartz: Yes.

The Acting Chair: I am not quite clear yet. Are you at this point making a presentation or are you speaking about the process that this committee has gone through over the last period of time?

Dr Schwartz: No, I am speaking specifically to the question of whether the amending formula should include provisions for binding referenda.

The Acting Chair: I am sorry. I was not quite following you. Thank you for that comment.

Dr Schwartz: I am sorry if I did not make that clear. I was just trying to illustrate the point about whether consultation is a substitute and I was giving some examples. There was certainly no offence intended to this committee. I am very honoured to be here and I have had some good things to say about your previous efforts, although I would not give them an A-plus. But my point is to use these illustrations of why it is that recent experience has shown to us, I believe, that we have to have binding referenda.

There is one point that I think is often missed in this discussion of referenda: There is a problem with politicians. Politicians are always telling us what the problem is with the people. Let one of the people tell you what the problem is with politicians. There is a conflict of interest, to some extent. Politicians, when they write constitutions, are to some extent deciding what their own powers and positions are going to be.

It is not just a theoretical matter. If you look at Meech Lake, when the premiers got together, one of the things they decided was that it would be really good if premiers had more power. Not just if provinces had more power, but if premiers had more power. I mean, what happens when you put the Prime Minister and 10 first ministers in a room? It turns out they decided it would be really good if premiers got to make Supreme Court appointments, if premiers got to decide whether to opt out of social programs, if premiers got to nominate senators, if premiers got a ticket to first ministers' conferences on the Constitution every year for ever, if premiers got the right to attend first ministers' conferences on the economy. You leave the decision-making process up to the executive and you get executive federalism.

The only way to break out of that loop, it seems to me, is to sooner or later give the people a shot at it. In fact, for example, I am not optimistic that the politicians are going to allow people to have referenda. The approach that was taken in Beaudoin-Edwards was, "We'll have a referendum if we're sure we can win it or if it looks good, but we're not going to promise you a referendum up front." On the other hand, if you ask the people, "Do you want a referendum?" I would think the people would tell you, "Yes."

Some sort of natural difference in perspective is going to occur between politicians and the people. Some use that different perspective to say that people should not be allowed to decide because they say that somehow the people are more impassioned or less informed. But I think you should look at the flip side of the coin, which is that to some extent, if you are deciding on your own powers, there is a problem with keeping a monopoly on decision-making within your own hands.

Even though we do not have time to set up a binding referendum for this coming round, I think provision for a binding referendum should be contained in this package, and this package should not be passed until there is a referendum on it.

1530

I have a lot of things to say about other aspects of the amending formula, about the Victoria formula, opting out and so on, but since time is very limited I will just focus on the one point about the referendum. I would be very happy to answer any other questions you have, but just to conclude, I want to briefly touch upon what I have to say about the other thing. Again I would be very happy to answer questions, but I will try to be respectful of your time and those of future presenters and keep my main presentation very brief.

With respect to the Canada clause—and that is one of the issues I wanted to revisit in the brief I prepared especially for this committee—it is unfortunate that we are drawn into these discussions about symbolism and rhetoric and so on. Frankly, I have always thought and always said in my writings that I think the approach to constitutional reform should be to try to avoid the divisive rhetorical debates and find common ground. One of the ways you find common ground is to focus on where you are going in terms of practical arrangements and not try to get everybody to agree on ideology. I do not think people have to agree on ideology, I do not think people have to share a vision in order to have a workable country. To some extent a Constitution is a way where people who have different views, and legitimately different views, can live together. They should not all have to subscribe to the same official ideology in order to write a constitutional document. It looks like there is going to be a lot of impetus to have some sort of symbolism there because of Quebec's demand for recognition as a distinct society. I have a very few points about that, although many more are made in my brief.

First, the Canada clause should have Canada in it. When Manitoba proposed its Canada clause it emphasized that first and foremost all parties have to commit to building Canada. That is not the same as having a so-called Canada clause, which recognizes multiculturalism, Quebec

and all sorts of other good things, which does not express the whole as well as the part, which does not say, "We're committed to Canada as well as all the aspects of Canada."

The Canada clause that I have propounded and the Canada clause that the Manitoba government has supported is called the Canada clause, and I think Manitoba gets some privileged ability to style it because it invented it. It starts first and foremost by saying, "Yes, we all have these different regional and ethnic identities and yes, we're all committed to living together in Canada." If out of this process comes a Canada clause without the "Canada," it is going to say a great deal about constitutional politics in this era, which is that consensus or the illusion of consensus was achieved by accommodating everybody in their special identity, but the political will and courage simply did not exist to even say that we have a collective identity, that all the chips on the mosaic can be put up but nobody is prepared to say there is a wall on which the mosaic rests. To me this is going to be one of the litmus tests of what this round is all about, whether there is a Canada in the Canada clause; and not just a recognition, "Yes, Canada exists as a federal state," but a commitment to living together and to building Canada, to talking about a Canadian identity and a Canadian society as well as all these other identities.

Multiculturalism has taken a lot of bashing lately, particularly in the Spicer report. Some of that bashing is fair. Some of it is unwarranted. I think the conclusion of the Spicer report is deplorable. Basically it says if people know too much or they follow their own ethnic identities too much, they are not going to be good Canadians. It actually says in the Spicer report that you should only allow heritage schooling for young children and only for a year until they get used to being mainstream Canadians.

I thought that one of the assets this country has is that people come from all over the place, they have all sorts of backgrounds and you can actually draw on that to make them more interesting people and have a more interesting and knowledgeable country. If British Columbia wants to have a heritage language program in which people from east Asia can continue to speak Japanese or Chinese or whatever, I think that is better for them as individuals and it is better for us as a country to have people who are knowledgeable about other languages. I am against, and I have been against, the form of multiculturalism which is buying votes in blocks, just a form of pork-barrelling. I do not know why anybody would be in favour of that, and there is resentment about that aspect of multiculturalism, but I do believe that multiculturalism should be recognized as a historical fact about Canada. It has a legitimate place in our future, and that should be expressed in the Canada clause.

I think there should be commitment to rights and freedoms in the Canada clause. I will refrain from nattering on now. I would just say, partly in response to the question that Mr White asked somebody else, that yes, I think the Canada clause should express some of our social values, but that is not enough. In other words, I am in favour of that, but just making statements about how we want to have a socially just society is not good enough. I am not suggesting you were saying that. I am just saying that is not going to be enough.

If you are going to have a just society, I believe the raw political fact of the matter is you have to have a strong national government. You cannot have these social programs with massive devolution. It is not going to happen. That is one of the reasons, as Professor Grey was pointing out, why the very powerful big-business lobby in this country is all for devolution. They are very well aware of the fact that there is no such thing as conservation of political power: You can take the power from the Senate, give it to the provinces, and the power is still there.

I believe the fact of the matter is that once you have neutered the federal government, the ability of big business and other special interests to manage the provinces is pretty good, and the prospect for regulation in the public interest and the preservation of social programs is very poor.

I would suspect that the "distinct society" clause—I am not optimistic about this solution being followed, but I would say very briefly, you know, just as a clarification, that I would not be optimistic about that. Everything that you say about a distinct society is going to be compared to what was said in Meech. If you clarify and protect, in direction, the Charter of Rights, Quebec will not accept that. If you do not, it is going to run into the same problems as before.

I would suggest a little lateral thinking here. The federal Tories have thrown out some language about "unique character" and so on. I like that language better anyway. I think it is less separatist in its connotations. It might not be a bad idea to break out of a language which many Canadians find offensive and which has this very troubled history, and try to find another way of expressing Quebec's unique character.

"Unique character" is actually a pretty good phrase. You can go on and say that its unique character consists of having a French-language majority and an English-language minority, and a civil system of law, and all that stuff. It might not be a bad idea at all, given the checkered past of the particular phrase of "distinct society," to think laterally on this and try another idea which seems to have some promise.

The question of Senate reform: I do not know how much interest it has had at these hearings. I very much believe there should be Senate reform. Now, if the idea of Prince Edward Island having the same number of seats as Ontario sounds ridiculous, it is because it is ridiculous. On the other hand, I would point out, with respect, that there has been a raft of reports, including two by federal agencies—a parliamentary committee on the Senate, and the Macdonald royal commission on the economy—all of which have the same bottom line, which is that small provinces should get half as many seats as big provinces, except PEI, which should get a few less. A special case would be made for PEI; otherwise all small provinces get half as many seats as Ontario and half as many seats as Quebec.

I think that is a very reasonable balance between saying all provinces are equal—which is clearly going too far away from one person/one vote—and on the other hand, trying to make a complete mockery of the Senate reform movement by saying we have four equal regions. The four equal regions stuff is completely unacceptable to anybody who really cares about the principal purpose of Senate reform, which is to give more clout to the smaller provinces.

In fact, as far as western Canada goes, it would actually reduce their representation in the Senate.

I do not think it is unreasonable to say that Manitoba could be half of Ontario in a body which had limited powers. I do not think the Senate, even if reformed, should have as much power as the House of Commons. I would point out that it is not okay to trivialize the Senate reform movement by saying, "PEI equals Ontario, and that is unacceptable." It is unacceptable. There are reasonable alternatives. They have been stipulated. They have been stipulated by federal agencies as well as people from western Canada, and I think they should be given serious consideration and implemented.

Again, of course, I do not believe the Senate should be able to paralyse the House of Commons. If we are going to have Senate reform, then the Senate should be structured in a way in which it is not capable of permanently paralysing the one person/one vote House of Commons.

The other thing I focused on in my brief, especially for this committee, was the future of the social programs. I did promise I would keep the introductory remarks as brief as possible, so if people want to follow up on those, I would be very happy to speak to them. Otherwise I would conclude as I began, by thanking you very very much indeed for being invited here. I am leaving myself open to any questions you might ask.

1540

Mrs Y. O'Neill: Thank you, Professor. First of all, I want a clarification. You painted with a rather wide brush a lot of the committees that have taken place, the consultation process in the country. You mentioned the New Brunswick committee, and I want to clarify whether that was the one in existence now or the one that was in existence in 1987-90.

Dr Schwartz: The 1987-90 one.

Mrs Y. O'Neill: Okay. Now I would like to, if I may, talk to you about your ideas on referenda and have you respond to some of it. You are one of the few people who have really tried to help this committee by being rather specific about the concept of referendum. Many people have come and put it as one of their options, among a mix of other things that they consider priorities. I certainly have not had time to read through the rather large brief you have presented to us, but you are talking about "binding referendum." As I think I read in your amending process, you are talking about the impossibility of opting out—and that is what I consider binding—yet opting out has become really a very accepted tradition and seems to be very much treasured by many Canadians. That is one concern I have, the binding referendum concept.

The other problems I have are that somehow or other I feel you have put referenda on the table and suggested that if there is one held on December 1, 1993 or any other date that anyone may choose, that it is a permanent decision for Canadian people, unlike an election that may be held on December 1, 1993 in any given province or at the federal level. I have some difficulty with the distinction between a decision made regarding an issue and a decision made regarding a choice of government as being permanent. I think you have said that your amending formula could be

accomplished incrementally. I think that is the word you used. Therefore, I would like you to comment on the binding and on the permanent nature of the referendum.

My concerns about referenda—and I am certainly not closed in my mind on that; I have tried to study that issue as well as the constituent assembly because I think we have an obligation to deal with those—but the percentage of the population that participates in any vote opportunity concerns me. It concerns me mostly at the municipal level. It sometimes concerns me at the national level, and I suppose every three or four years it concerns me at the provincial level; but that to me is something that would not maybe change with the referendum. I also have some difficulty with the round we are into now, and the expectations that are built across this country of the many, many issues that would have to be on a referendum. I am certainly very respectful of the witnesses that have come here and the constituents I have and, indeed, the provinces in this country. I respect people and I hope that has been one of my basic principles, but I just do not know how logistically a referendum could include the issues we are dealing with in their number, let alone their depth.

My final comment to you—and I know I am challenging you some, but I think you are certainly not unfamiliar with challenge. I see, somehow, that you have ignored in your presentation the process that is going on in many rooms in this building, of consultation and amendment as we go clause by clause. I have sat for four years now consistently on committees, and I have seen a lot of legislation changes. It proceeds through committee, and certainly in even third reading in the House from time to time. I think that is very healthy. I think it happens and I do not want people in Ontario or anywhere else in Canada to think that legislation made in Houses in this country cannot be amended and amended significantly. So perhaps you would like to comment. I think I have made enough of a question of some of the statements you have made.

Dr Schwartz: I will try to make these very brief. That is with no disrespect to your questions. It is just that there are about five of them, and I know there is a lot of time pressure here, so if I have not made myself clear on anything, please let me know.

With respect to binding, by that I mean, in the brief, that it is legally decisive on whether the amendment goes through or not. That is what I mean by binding.

You raised another point which I have also addressed, which is whether we should allow opting out. Now, those are partly separate questions, because you might disagree with me on whether we should do away with opting out, and I would not commit seppuku if at the end of the day we continued to allow opting out. I would be a lot more upset if we did not have referenda at all. One is a question about the people getting the last word, and they could have the last word according to different amending formulas. The other question is, what is the amending formula? Does it allow opting out?

With respect to opting out, I think opting out is a very important protection for minority rights in this country, and you could not do away with it unless you provided for a very high level of consent and substitution for it. I have

suggested that you would have to have eight of the provinces, you would have to have 60% of the people, and you could not have objections of more than 60% in any one province. In other words, if any province was not only against but very strongly against, that would kill it.

I would like to see one all-purpose amending formula instead of this more complicated and checkerboarding opting-out system. I would emphasize, though, that whether you agree or disagree with me on that, you still might be able to find your way to agreeing with me on the idea that we should have the people having the final word. We could keep the existing formula and still have it operated by the people instead of by the legislatures.

You asked the difference between elections and referenda. I tried to make the case that constitutional reform really is irrevocable in this country, and that it is not: "Well, we made a mistake. Whoops. Let's go back and try to restore the federal spending power." That cannot happen, as a practical matter. To give away powers is easy. It is very easy to get 10 provinces to say, "Thanks, yeah, power is good stuff," and apparently not so hard to get a federal government to give it away. You just need the federal government to give it away and it is gone. To go in the reverse direction, for all practical purposes, you would have to have, under our amending formula, unanimous consent of the provinces. Provinces could either veto it or opt out. The odds of 10 provinces suddenly saying, "Wait, we went too far; we are giving it back," is zero. Quebec, for example, is not going to agree that "We went too far; we are going to reverse the direction." Constitutional stuff is irreversible in a way that elections are not.

The second point about referenda versus elections, of course, is I do not think elections are a fair test of an idea. People vote in elections for all sorts of different reasons, local issues and a constellation of national issues. I am not sure whether most Canadians—when I say I am not sure, I am not saying that equivocally. I actually do not know whether most Canadians were for or against free trade in the last election, but it is quite possible that most Canadians were against it, and there was still a whopping majority of people elected who decided to implement it. I do not think you are going to get the clear test of whether people are approving of this package in an election. And what happens if all the parties support it? Then people do not have any choice at all. Who did you vote for in the last election at the federal level, if you did not like Meech?

The size of the package: I think that is a perfectly legitimate concern. If you are asking people about 10 different things and asking them yes or no, that does not make a lot of sense. But I think the solution is you should not ask people about 10 different things. Ultimately, this round should not be about 10 different things. Under this time pressure, given the complexity of all these issues, I do not think this round should reform all our institutions, rewrite the division of powers, establish aboriginal self-government, rewrite the regime of bilingualism and so on.

I find all these things pretty complicated. That is why I tried to address them. But when I handed you this whopping submission, I said: "Look, I know this is a lot of stuff. I don't expect you to read all of it." But I don't know how

much of this stuff is going to be dealt with. If there is going to be this megapackage, then I am going to try my best to address the various things that have gone on.

I do not think this round should deal with all those issues. If it does deal with a few issues, even those could be separated. We could have a referendum on division of powers, another referendum on the amending formula. I think your concern is perfectly legitimate, but I think it should be dealt with by acknowledging it and adjusting the referendum process accordingly, not by rejecting the idea of referenda.

Did that address all of your questions?

Mrs Y. O'Neill: Thank you.

Mr White: It was a very interesting presentation. Certainly you argue very well in favour of a binding referendum. I quite agree with you. Very clearly what we are talking about is a redefinition of what we are as a country, what our vision is as Canadians. It is very important for the public as a whole to have a real sense of ownership of that, a real participation in that. However, there may be some problems with referendum or referenda. Certainly that is one major option, but it may not be the one that is chosen.

I am wondering what other suggestions you might have. When you were talking about public participation, you sort of put all your eggs in one basket, all your arguments in one basket with regard to a referendum. I am wondering whether you could speak to other forms of eliciting public participation.

1550

Dr Schwartz: As many as three years ago I think I was one of the first people to propose that there should be a constitutional requirement of consultation, including public hearings, before you have amendments, but, in order to make those meaningful, you have to give the people the last word at the end of the day. That is where I began.

With all due respect to members of this committee, I think recent experience has demonstrated that it is quite possible to go through a process of consultation and for it not to have a significant impact on the outcome. Just look at Spicer. You are overwhelmingly told you believe in the equality of provinces; response to the Spicer commission, "We hear you and you're stupid." That is what the Spicer commission told the people of Canada and said, "Don't you people realize that BC has a special provision for railways? What is the matter with people? We're not up to speed here." So you say, "Even though most of the people believe in this stuff, the fundamental principle of Canada, which—

Mr White: My question was really not to dispute with you the importance of a referendum or that it might not be an excellent means of gauging and encouraging participation, but about other means as well.

Dr Schwartz: The point having been made, obviously, that I do not think these other things are sufficient and I do not think they are meaningful unless accompanied by this. Of course I think these public hearings are a useful process. As I say, I am a veteran of seven now. I do not know if this is seven times lucky or not.

A constituent assembly is probably something you are considering. I do not have any glib answer to that because

it all depends on what it is and how you do it. I make these observations: (1) If there is a constituent assembly, it must be elected, not appointed; (2) If there is a constituent assembly, I think it should deal with a very limited package of issues and we should experiment with it. Nobody is smart enough to know how the constituent assembly is going to work out until we have tried it. How could we possibly know, in the Canadian context, how a new experiment is going to work?

Are we going to gamble the future of the country by putting everything on the table in an untried process? The Canadian way, I would suggest, at least what used to be the Canadian way, is more incremental and experimental. I would suggest we take some big issue like the social programs or fiscal relations. It is big enough but still one definable issue. Let's have a constituent assembly on that and see if they can come up with something, or let's have a constituent assembly on institutional reforms or even on something like training and education, and what the division of power is.

I do not think we should be stampeded into allowing the current government or the current constellation of politicians to rewrite this country from top to bottom, and I would say that about any group of politicians. I would make the claim about any group of Canadians at any time that we should show some humility about our ability to deal with a whole wad of complicated issues under time pressure and foreclose the ability of future Canadians to come up with something different.

I think the incremental-experimental tradition should be respected. I think the constituent assembly is an idea that is certainly worthy of experimenting with and perhaps is a way of reducing the fears to a level where we can actually have one. I am one of those people who have a lot of concerns about what happens if you put the whole Constitution up for grabs. There are no parameters in an untried process. I would be very happy to say, "Let's have a constituent assembly in a couple of months on a couple of important issues."

Mr Ruprecht: I congratulate you, Professor Schwartz on your presentation. I want to put you at ease somewhat. From your perspective as an academic, you have probably been treated the same way before every committee. I just wanted you to know that in my previous life as an academic at York University, I appeared before the Senate foreign relations committee. You will have similar treatment in the United States before government committees, as you will probably receive in any committee that deals with important items. They seem to have their own agenda. But I think we are here today in a different situation where we have to come to a conclusion on whether we want to have Canada remain as a country. As the previous person indicated to this committee, if this is not the case, Canada will break up and we will not have a country, obviously.

I would like for you to point out to this committee what our previous presenter had indicated, because you have some expertise not only in the remarks you have made but in other areas. I want to address specifically the "distinct society" clause. In your opinion, Professor Schwartz, would you say that Quebec may not be aware that the

"distinct society" clause is only an expression without significant enhancement of power? In other words, is it simply symbolic, and will they accept a symbolic statement from the rest of Canada that a "distinct society" clause should be accepted within that round as a symbolic gesture? What would you say, that this will not be accepted by Quebec, that Quebec will realize what the rest of Canada indicates as a symbolic item and react to that and consequently wish to have additional powers granted to it and that will not be acceptable?

Dr Schwartz: During the Meech round maybe we were too much obsessed with the legalisms. A symbolic statement is not important if it is only symbolic, or we do not have to worry about it if it is only symbolic. I think symbols translate into real power. For example, if the Quebec government understands this is what "distinct society" means, when the people of Quebec understand that, it does not matter what the Supreme Court of Canada says.

For example, on outdoor-sign laws the bottom line was not what the Supreme Court of Canada said. The bottom line was what the people of Quebec thought and what their Legislature thought. It is very important that we phrase these things in a way that, even if they do not have curial impact, even if they do not change the outcomes of lawsuits, we come to an understanding so that when these things are invoked at the political level they do not cause division and ill feeling.

I am more concerned, frankly, about the way "distinct society" will be used by politicians and the way it will play out in the political psychology of the country than I am about what is going to happen in the courts. I think it may be possible to put Quebec's unique character in a context in which it is acceptable. I think you would have to recognize explicitly the principle of equality of provinces, and I would point out—and this is not generally recognized—Quebec has agreed to the principle of equality of provinces. They signed the political accord at Meech in 1987, which included their agreeing to the principle of equality of provinces. It was not in the draft amendments, but it was in that political accord.

It would have to include a commitment to the Charter of Rights and Freedoms and its commitment to liberty that Professor Grey spoke about. Maybe if you state affirmatively these other values, that we are still interested in building Canada and that we are still interested in the equality of provinces and in rights and freedoms, then we can also talk about the Quebec unique character. Then you have not restrained it by narrow and niggling definitions; you have restrained and constrained it in a more positive and constructive way by saying, "Here are all these other things that are going on," and you have placed it in a context which prevents it from getting out of hand; but on the other hand it does not force you to say, "You're not this, you're not this and you're not this." I think that may be the way to proceed.

I do not think it is going to be really promising in this next round, although it may happen, but I think if the "distinct society" clause comes up again, the first thing Quebec lawyers and the human rights lawyers in the rest of the country are going to do is to compare it to what was

said in Meech. If you say "distinct society" again and this time you say, "This doesn't affect the charter," Quebec is going to say, "Get lost." If you say, "distinct society" again and you say, "This does affect the charter," then you are going to have exactly the same concerns you had last time.

In addition to the fact that I think "distinct society" is an unfortunate phrase to begin with, almost nobody has a problem with Quebec's unique character, but I think that particular phrase is not a fortunate choice of language. Maybe if you used a different phrase to begin with, like "unique character," then you would not be suffering this problem of everybody immediately going back and comparing it to the ill-fated Meech round and it is major trouble and something might get forced through this time. It is not going to go through against Quebec's wishes, but if it is not going to be possible for those of us who think it should have a language-restraining effect on the charter to get that language, it means the same people who were unhappy last time will be unhappy this time.

Mr Ruprecht: Can I ask another question, Mr Chairman, or is my time up?

The Acting Chair (Mr Malkowski): No, I am sorry, we have another person who would like to ask a question.

1600

Mr Bisson: I would like to follow up a little on something Mrs O'Neill talked about with regard to the parliamentary system and, leading to that, the constituent assembly you talk about. Just as an observation, the first thing is the tone of what I have heard you say with regard to our parliamentary system. I get the impression that you seem to have less desire of a parliamentary system versus others. I might be wrong, but that is the way I read it.

I just bring up the point of what Mrs O'Neill talked about, that if we looked through the democratic world of what is out there, some 28 countries, those countries that have made bigger strides in being able to deal with social and economic issues in providing what we can call a "just society" to the people living within its boundaries, have done it within the parliamentary system. We look at England, Canada, New Zealand, Australia and others. The great strides have been made because the system is flexible in that it does have a certain amount of decentralization, to the point of allowing provincial legislatures, in our case, to be able to bring forth legislation by which other legislatures follow, and eventually federal government comes on side.

The sense out there on the part of the people is that we are not going to trust those politicians to be able to negotiate a deal because, after all, they do not represent our views. I think that one difference—and being a new member to this assembly, not as a New Democrat—is the one ability this job gives me as an MPP or, as some people call it, an MLA, to be able to look at an issue from more than one side. My views are quite different today from when I first came into this Legislature on specific issues of economy, on social issues and a number of others, because I have had the opportunity to sit down with different people within my community and listen to both sides of the story. That is the one tool we have as parliamentarians. Maybe we do not have all the answers, but at least we have that

ability of being able to look at things in a number of different ways because of our jobs.

I refer to your brief, and it distresses me to a certain extent. You say within your brief:

"Politicians are another matter. When push came to shove, almost all of the senior ones were prepared to ignore public opinion in the process with Meech. Some may have acted primarily out of genuine conviction; others may have been influenced by self-interest. Four provincial premiers signing Meech meant simultaneously looking and feeling like a statesman, a national builder or a new Father of Confederation."

That was one of the criticisms that was leveled at our last Premier, which I tend not to agree with. I think what Mr Peterson tried to do is a realization of what is going on within this country. We needed somehow to try to put an end to some of the problems we have with regard to our constitutional dilemma. It is exactly that attitude that has led us into this position, that people within our system try to sell short the work politicians are trying to do. Politicians on all sides may not agree on certain issues. But certainly we have some common ground that we work with and try to work towards solutions of our problems, which leads me to the point about the constituent assembly. All that being said about politicians, the types of things I have seen within your brief, that is very much what we are hearing within the general public, so it is not any different in that respect.

You say a constituent assembly would have to be an assembly that is elected by the people. Well, do they not become the politicians? If I, living in Manitoba, vote for you to become my representative at the constituent assembly, do you not all of a sudden become that politician I cannot trust because you are not going to take more note of my views, because you will say one thing during the elections, become my representative at the constituent assembly and do another thing when you get to the constituent assembly itself?

Dr Schwartz: Again, the whole question of the value of the parliamentary system is a larger one than I can do justice to. Let me start by saying that I like the many aspects of the parliamentary system. It still remains my preferred system.

Mr Bisson: I hope you try to promote it somewhat.

Dr Schwartz: The parliamentary system has the advantage of this very warranted humility I spoke about, that you can try something, and if it does not work you can try something else. I do not claim to have platonic access to the truth but, on the other hand, I do not think anybody else does either. I am very concerned about massive constitutional reform, putting in place a process based on a particular time and perception and having that irreversibly imposed on the people of Canada.

The point I tried to make about referenda, and perhaps I will be repeating myself a bit, is—

Mr Bisson: I am speaking about constituent assemblies at this point.

Dr Schwartz: I was going to address your saying all these parliamentary systems have been successful. One of the points I tried to make is that even parliamentary systems

have recognized that constitutional reform is different. There is a difference between stuff that can be undone and structural, irreversible reform, and that is why the mother of all parliaments set up a referendum concerning the European Community. That is why the Parliament of Great Britain that you referred to held referenda with respect to devolution of authority to Scotland and Wales. Australia, I believe, had some provision for—

Mr Bisson: I just want to return you to the point that I am asking. The question of referendum, I think, is one most people are thinking about at all levels of politics and may come into that at the end. I certainly can sit here and agree with you on the fine points of referendum. The point I am making is, by your becoming the elected representatives at the constituent assembly, are you not then that politician nobody will trust?

Dr Schwartz: There would be some differences between constituent assembly and the current political setup, which does not mean that people would not have a justifiable concern about what the constituent assembly does. I think the bottom line even of a constituent assembly is a referendum. One hundred guys get in a room, or 100 men and women get in a room, and do something—

Mr Bisson: I hope there are women involved in that as well.

Dr Schwartz: I said "men and women." Some might not have it right, and it is an untested process. I would not say, "Put these people in a room and let them do what they want and that is the way Canada is going to be." I think a referendum should be the bottom line in any event and I think many of those who have proposed constituent assembly have said as much. Constituent assembly would have the advantage that people would have to campaign on a very specific issue rather than the whole range of issues.

Mr Bisson: What happens once they get there? Are they not the politicians? Do they not have to change their views because of information brought to them by other representatives in the constituent assembly, by lobbying efforts on the part of their constituents within their particular areas in order to change your views to reflect what their constituents are talking about? The point I am trying to make is, the constituent assembly is a little bit what Professor Grey talked about a little while before, a movement like nationalism. It is an idea we can buy into because it is something out there somewhere and it might very well be based on some very good ideas, but the practicality of possibly making it work is something else. Is not the representative of the constituent assembly a politician? Is it so pure a system or is it very much what we have now?

Dr Schwartz: Neither. It is not so pure a system and it is not very much like we have now. It is not so pure that we would want to have a referendum. It is not so pure. Bad things could happen. The possibility is, these people could say one thing and do something else. Is it better in terms of focusing on constitutional issues? I think it might be better because of the focus with which people would have to identify their views before being selected and because people will not be subject to party discipline, which is a very important consideration.

Mr Bisson: But party politics has not come into play when it comes to decisions. We have seen that under Meech.

Dr Schwartz: With all due respect, I think party politics had a great deal to do with the Meech round. After Premier Peterson, I have some problems with the political morality and what happened in June 1990. I do not think it was acceptable to once again go through this closed-door process to subject Premier Wells and Premier Filmon to the enormous psychological coercion they were subjected to. I do not think it was appropriate to make radical decisions about Canadian institutions, like giving away a quarter of Ontario's Senate seats without consultation, so I do not see the sort of constitutional politics practised in the last round as acceptable, nor do I see it as acceptable. What I seem to be seeing is a recurrent and evolving tactic of saying to people who are critical of the system: "You are the problem. You guys are so cynical. You don't trust us. What is the matter with you guys and women?"

The reason we got to be this way might just be because of observed conduct to which we might have justifiable objections. I went to seven hearings. I looked at all these things with a straight face and good faith. I have participated every opportunity I have had. That is not the conduct of a cynical person.

The reason I am critical is because my perception, right or wrong, is that the conduct and the quality of the political morality and the responsiveness to the needs of the Canadian people have not been there, and extrapolating from that, I have every reason to be pessimistic about this next round unless the people get the last word.

The Acting Chair (Mr Drainville): On that very pessimistic note, Professor Schwartz, I thank you for coming before the committee all the way from Winnipeg to present your briefs. You have certainly given us a great deal of information in the briefs you have given to us. I am sure we will have the opportunity to look at that and to weigh it in terms of our final report so, again, thank you for coming before the committee.

CATHERINE FRAZEE

The Acting Chair: I would ask the next presenter to come forward, Catherine Frazee, from the Ontario Human Rights Commission. I want to say how happy we are as a committee to have you before us, Ms Frazee. Your work with the human rights commission has been very important for this province and we cannot say thank you enough for taking some time out of your very busy schedule to be here this afternoon. As you know, we have originally allotted you half an hour. If we need to extend that, I believe the committee is in agreement that we would afford you as much opportunity as possible to air your views. If you could possibly leave some time for some questions and answers, that would be much appreciated.

1610

Ms Frazee: Thank you very much for those words of welcome. It is a pleasure and a very good feeling indeed to be able to share with this group discussion about an issue which is perhaps larger and certainly of a different proportion

to the subject I most frequently talk about, the human rights commission's case load.

The time lines for this presentation have not allowed me to present to you a formal and official submission from the Ontario Human Rights Commission but I do welcome the opportunity to share with the committee some of my personal observations and reflections which I hope are germane to the issues at hand and which have certainly been informed by my experience with the human rights commission over the past several years.

The order of reference given to your committee is indeed an important one, and we all look forward to reviewing the final outcome of this process and the recommendations of this committee. I followed the work of the committee in the first phase of its proceedings and I wish to congratulate and express my appreciation for the effort and the level of commitment that I know went into making sure all of those who wanted to had a meaningful opportunity to make their positions and their views known in this very important discussion.

The note I received from the clerk of the committee suggested that I address five subjects which are of particular interest to the committee. These are: (1) the possibility of placing a Canada clause in the Constitution, (2) multiculturalism, (3) women, (4) persons with disabilities, and (5) the Charter of Rights, with particular emphasis on social and economic rights.

I am going to attempt to touch upon each of these subjects in the time allotted but the net result, I am afraid, may prove to be somewhat of a whirlwind review. However, I think there are some important points to be highlighted.

First of all, with respect to the Canada clause, the first ministers' conference in June 1990 discussed, as we know, in some detail the formation of the Canada clause which would be placed in the Constitution through the vehicle of a companion accord some time after the successful passage of a Meech Lake accord. It was, we know, a response to those who felt left out or who perceived that their rights were somehow diminished or would be diminished by the "distinct society" clause of the Meech Lake accord.

I think at this point it is important to set out and reaffirm the position of the Ontario Human Rights Commission which was made initially by my predecessor before the select committee on constitutional reform in March 1988, that we fully support the promotion and the enhancement of bilingualism and we are sensitive of the need to accommodate the legitimate concerns of Quebec within our constitutional framework.

The main problem I can see with regard to the insertion of a Canada clause which would describe the fundamental characteristics of Canada is the possibility of leaving something out. A Canada clause placed in the British North America Act in 1867 would look very different from such a clause placed in the Constitution, say, in 1929, before the famous "persons" case was decided. In other words, such a clause would at that time probably not have included women. Certain characteristics are always evolving, or at least our consciousness of these characteristics is ever evolving, and one would not want to arrest this process with, say, a definitive list of groups or a definitive list of

the needs or desires of Canadian society in a single constitutional phrase, however complex that phrase might ultimately be.

If the purpose of the Canada clause is to describe the fundamental characteristics of Canada, I think it is important for us to try to isolate elements to which we can in good faith extend a sort of permanent value. Matters such as our fundamental belief in rights and liberties, recognition of the contribution of our first nations peoples, persons of English and French origins and those of multicultural heritage to the development of our country are, I believe, all appropriate. But I do not believe that a Canada clause should contain a shopping list of acquired rights or pretend in any way to be a mini-charter.

As such a clause is fundamental to the Constitution and is to set out the basic nature of our country, I would suggest that such a clause be placed either in the preamble or as the first standard clause in the Constitution. I might add in passing that our experience would suggest that the status of such a clause would not be in any way diminished by its inclusion in something like a preamble. The preamble to the Ontario Human Rights Code, for example, which recognizes the dignity and worth of every person and provides for equal rights and opportunities without discrimination, has certainly been quoted by the courts and referred to strongly when interpreting the substantive sections of our code.

So a simple and uncluttered Canada clause setting out the fundamental nature of our country would certainly be an aid to the people of Canada, to the legislatures and to the courts. It would assist all of us in feeling a part of the basic law and feeling a sense of ownership of that law, and it would certainly assist in the passing of future laws and interpretation of law.

But in the articulation of any such clause, I would like to caution against perpetuation of tolerance as a value appropriate for the 1990s. Surely we have moved beyond a time in our history when differences are merely tolerated. I believe we now are living in an age and in a nation in which plurality is valued, in which special needs are and will be accommodated, in which unique perspectives are respected and honoured and historic patterns of disadvantage will be actively corrected. I think the language of tolerance belongs to a different era.

Second, with respect to the issue of multiculturalism, I am very pleased, as I am sure you are, of the number of groups representing the multicultural communities of Ontario which have come forward to give evidence to this committee. We have reached a time in our history when our collective commitment to the principles of multiculturalism are being tested. It is a time when elected leaders must draw upon the vision, I believe, of a whole much greater than the sum of its parts and we must all find the moral courage to affirm strongly that we are simply richer in our diversity and because of our diversity.

As much as I hold to this truth, however, I must echo the point which was made in your phase I report, that our commitments on the policy level must not mask the need, or perhaps more accurately the imperative, of removing barriers to access to full and equal participation in social,

political and economic domains, barriers which thwart the progress of those whom our noble words would seem to protect. Let us not forget, as those of us charged with the enforcement of this province's anti-discrimination legislation can never overlook, that the gap between what our various equity statutes aspire to and what our sisters and brothers experience as the reality of life is formidable in width and every other possible dimension.

1620

Of course, it would be desirable to have section 27 of the Charter of Rights and Freedoms amended so that it does become more than an interpretive clause. However, I recognize that substantive protection for the rights of persons of multicultural heritage is actually contained in subsection 15(1) of the charter, which sets out an entitlement to protection and equal benefit of the law without discrimination based on race, national or ethnic origin, colour and religion. For this reason, and emphasizing the great weight and the great importance of constitutional amendment, the emphasis of my presentation would rather be to advocate that the "notwithstanding" clause of the charter be subjected to careful scrutiny.

It is my belief, and it is in fact the commission's formal position, that the inclusion of section 33 came about precipitously and without the appropriate opportunity for Canadians to consider the wisdom or the desirability or indeed the full ramifications of a parliamentary override provision. I am aware of the reasons for placing section 33 in the charter. Section 33 was designed in large measure to allow legislators to override court decisions which unduly limited rights set out in the charter. But this has not been our experience with section 33 and I believe it is time for us to perhaps reconsider its place in the charter. Section 33 allows the suspension of rights, and even the threat of suspension diminishes the protections given in the charter.

Next, and briefly with respect to persons with disabilities: Persons with disabilities are of course also protected by section 15 of the charter, but as this committee has heard, I am sure, clearly, such constitutional protections have had relatively little impact on the living situations and circumstances of Ontarians with disabilities.

As just one of countless possible examples I would like to cite from the commission's recent brief to the Royal Commission on National Passenger Transportation. One of the impediments to the development of a transportation system that would be accessible to persons with disabilities is the federal structure of our Canadian government and the resultant division of powers. The federal jurisdiction covers interprovincial, national and international travel, as you know, while the provinces are responsible for providing or regulating local and regional transportation. This division of jurisdiction does make it difficult to achieve universal access for persons with disabilities through the adoption of national standards. We would appreciate your committee addressing such complex jurisdictional problems as this.

The provision of services for persons with disabilities is primarily within the jurisdiction of the province, we know, and the decision as to whether or not to provide services is primarily, of course, a question of finances. It is with this in mind that in the concluding part of my presentation I

will be recommending to your committee that you study a proposal to amend the Charter of Rights to include social and economic rights. This would give to those who are disadvantaged the opportunity to question the allocation of resources within our legislative scheme.

Next, with respect to women: Briefly, the protection and enhancement of the rights of women must be addressed on many levels. Women should have the right to be safe at home, to be safe at work and to be safe outside their homes and their workplaces. Basic needs such as security and safety, food, shelter, employment and access to services such as health care are major issues for women in Canada and especially important issues for single mothers. A study entitled *Women and Labour Market Poverty*, with which you may be familiar, completed for the Canadian Advisory Council on the Status of Women in June 1990, indicates that the poverty rate for female heads of single-parent families was 44.1%, and poverty among single parents is the major factor underlying the high level of child poverty in Canada, a level which can only be described as unconscionable by any standard.

Women and others are concerned, of course, that the present constitutional struggle threatens the existence of national standards and national programs. It is also a concern that if provinces pursue the right to opt out of national programs no new national social programs will be created. This is especially important for single mothers and for other women working outside the home who desperately need an affordable day care system funded jointly by the federal and provincial governments and regulated by standards that are applied nationally. Again, in this context I would encourage the committee to consider the impact of positive rights in social and economic spheres upon pressures and concerns of this nature.

Although I was not explicitly asked to, I would like to take a moment, if I may, to address issues pertaining to the aboriginal peoples of Canada, and in particular to the aboriginal people of Ontario.

I deplored their exclusion from the process of constitutional reform in 1987 and again when attempts were made to fashion a companion accord in June 1990. I am hopeful that they will be included as equal partners by the federal government in the current round of constitutional negotiations. There is little about the future of this country that can properly be discussed without our first nations people figuring prominently in that discussion.

I urge both the federal government and the government of Ontario to pursue the entrenchment of self-government for aboriginal peoples in the Constitution. I believe this must be done as a necessary first step. The intricacies of the level and the nature of self-government can and will surely have to be worked out among aboriginal peoples, the provinces and the federal government, but this must happen once the fundamental recognition has taken place.

I applaud the recent efforts of the government of Ontario in arriving at a statement of political relationship, recognizing the inherent right of first nations to self-government and formally breaking with the paternalism that has unfortunately and somewhat disgracefully characterized relations between governments and aboriginal peoples

for generations. However, as the statement itself declares, the province is limited in what it can do by the Constitution Act of 1987, under which "Indians, and lands reserved for Indians" are a federal responsibility. It is therefore of vital importance that we continue to urge the federal government to constitutionalize the concept of self-government and to recognize the aboriginal peoples as founding nations of this country.

Mr Chairman, during the first phase of this committee's work you heard a great number of witnesses speak about the social benefits enjoyed by them as Canadians. These benefits relate to health care, education, welfare assistance programs, etc. There was a general concern, I think, raised that through the cap placed by the federal government on payments to provinces under the Canada assistance plan and the freezing of payments under the Canada Health Act and established programs financing, critical programs may be cut back or changed.

Through these statutes and programs the federal government of course has traditionally demonstrated its commitment to lessen the effects of regional disparities on the lives of Canadians. Failure of these funding programs to keep pace with the inflation rate or the needs of the provinces in these social areas seriously threatens the fabric and standard of life of this country. This and other factors lead me to encourage your consideration, and your positive consideration, of a statement of economic and social justice, or perhaps the introduction of a new section to the Charter of Rights and Freedoms dealing with social and economic rights, including the right to shelter, health care, education, minimum annual income, employment and an adequate standard of living.

As a party to the international covenant on economic, social and cultural rights Canada does provide a detailed submission periodically to a special committee of the economic and social council of the United Nations outlining the status of our compliance. However, there is no individual legal remedy for abridgement in Canada of the economic rights in the covenant. If the Charter were to be amended to include economic and social rights, these rights would be subject to the enforcement section of the Charter and the courts would have wide powers to award whatever remedy they consider appropriate and just in the circumstances.

In our research for this presentation we came across the fact that India includes as part of its Constitution a section entitled Directive Principles of State Policy. These principles set out that the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political rights shall transcend all the institutions of national life. The state is to direct its policies towards securing for its citizens the right to an adequate means of livelihood, to distribute material resources equally and, within the limits of its economic capacity and development, to make effective provisions for the right to work, to education and to public assistance.

1630

While these principles are not enforceable by a court in India, they are laid down and are nevertheless fundamental

in the governance of the country and it is the duty of the state to apply these principles in making laws.

I believe it is important at this time in our history that your committee give serious consideration to the inclusion of positive economic and social rights in the Charter of Rights and Freedoms. Only from the successful enforcement of these rights will flow true equity for all disadvantaged groups in our society.

Perhaps it is best to conclude by stating in terms similar to those used by the Centre for Equality Rights in Accommodation when it addressed your committee earlier: It has to be recognized that claimable social and economic rights will not lead to instant housing or prosperity for everyone in Canada or everyone in the province, nor will it result in instantaneous bankruptcy of the province or the federal government. I personally share the perspective that recognizing and entrenching claimable social and economic rights will gradually transform our society to one which assumes the standard of equity which must feature prominently in our vision of renewal for this country.

That concludes my formal remarks and I will be pleased at this time to enter into discussion or to respond to questions to the extent I am able.

Mr Malkowski: Catherine Frazee, that was a wonderful presentation. It was simple and clear to us and I was very impressed. It helps me to clarify in my own mind the positions of the charter and how they reflect the needs and the aspirations of all of us in Canada, and that we need to keep the language simple so that it emphasizes the values we want to see.

You have mentioned section 33, the "notwithstanding" clause. Do you not feel comfortable with that? What suggestion would you have, then, if that were to be deleted? How could we then increase the strengths or the rights of, let's say, a minority group, or in terms of the social and economic charter? Would that be included there or would that not be appropriate? I would just like you to comment on that, if you could talk a little bit more about how that section would really impact and what recommendations you would have to this committee.

Ms Frazee: I think we must remember that section 1 of the Charter of Rights and Freedoms sets out a fairly strict test for ensuring that the rights and freedoms set out in the charter are subject only to such reasonable limits as prescribed by law—and I am quoting again from section 1—"as can be demonstrably justified in a free and democratic society." The courts have devised fairly strict tests for the use of this section. I think that those who are concerned about the doctrine of parliamentary supremacy and the possible subversion of parliamentary supremacy by the removal of section 33 should be satisfied that parliamentary supremacy is relatively well protected already through section 1.

One of the problems of section 33 is that it really does seem to be based upon what people have referred to as a hierarchy of rights. Certain rights are subject to the "notwithstanding" clause and other rights are not, and I find that quite unacceptable. Rights, as the word suggests, are fundamental in nature, and equity rights in particular, at our current state of consciousness as human beings, are

fundamental and they must be fully entrenched in the constitutional law of this land.

Mrs Marland: I wanted to ask you two fairly straightforward questions. I am a substitute member on this committee. I say that because I have not heard all of the presentations. We had a group last week who said it was not necessary to have enshrined in the Constitution special status for any groups if we really believe—I think, in fairness to them, they were saying if we really believe—in equality for everybody. I have a concern because of the groups that are excluded and that you address very well, the aboriginal people and women, and I was wondering if you could elaborate a little bit more on why you think it is necessary to have the status identified.

Ms Frazee: Let me try from a philosophical perspective. If I do not address your question, perhaps you would come back to me with it again to make sure that I do.

I think a lot of the debate on that particular question centres upon our notions about what is equality. We have moved from what is called a formal notion of equality, which is that of treating everyone the same, and we have moved beyond that in the last couple of decades to a notion which is much more substantive: that equality does not mean treating everyone the same; equality means recognizing the differences and accommodating the differences where they ought to be accommodated, introducing special measures or perhaps special status where the differences have been reinforced by history, by generations of treatment which was unequal. So our notions today of equality are broad enough and, in fact, compel us to treat and to recognize certain groups as having special status.

I suppose the very best example that we all understand is the example of our aboriginal people, for whom simple equal treatment is not enough because of all that has come before and because of all the injustice and all the disrespect and the disfranchisement and the marginalization that is part of the legacy of our aboriginal peoples, and of course our responsibility actively to correct.

That is, as I say, a fairly philosophical response to your question, and if I have not come to the real heart of it—

Mrs Marland: No, you have exactly, because what you just said obviously applies to women.

Ms Frazee: Precisely.

Mrs Marland: The second question is, where you are advocating that the courts be the enforcement agency, if we were to enshrine social and economic rights, how do you support that, again philosophically, when you are saying to the courts, "Here, you determine social and economic rights for the people of this nation"?

Ms Frazee: Yes, it is a tough question, because on either side of the debate I know there are very strong and compelling arguments. Let me put it this way. I think courts have had a great deal of experience in the interpretation of rights. I think our courts have the adaptability that is required to the task which would be given to them by the inclusion of social and economic rights in the charter. The courts admittedly are always somewhat behind the grass-roots social movements which ultimately shape the laws which the courts must interpret, but I feel that there

really is no alternative, that we want to entrench these rights. We want them to stand above and firmly entrenched and not to be subject to the vicissitudes, I suppose, of political change or popular opinion, which often run quite counter to the notions that we are trying to protect and to preserve in this great debate. While I recognize that there are limitations and some very serious concerns about placing this responsibility with the courts, I come down on the side that says that is the safest and the surest way to establish and entrench the rights.

Mrs Marland: Only because you feel it is the only alternative, is what I hear you saying.

Ms Frazee: Yes.

Mr Curling: I think that the presentation was excellent and right on target. I also share the feelings that you have about the limited time we are given. There are so many things that you could have commented on that would help this committee immensely. We have had people here who would spend an hour and we had hoped that those could be reversed, not in any way putting them down in their presentations, but there are so many areas on which you could comment. I regard you, Catherine, as one of the persons involved most closely with people who have been deprived of their rights. You have seen it daily, you wrestle with it sometimes with finance and sometimes with resources, and with criticism, of course, even coming from me at times.

But when you spoke about the disabled person—I am using that example, it was quite focused—about section 15 that makes accommodation for that, it has not yet fully been given to them. Presentations were made here previously in that regard from those individuals, saying that we should have it in the Constitution.

But we also heard about entrenchment, and as my colleague Mrs Marland mentioned, some people talk about putting everything in the Constitution. There is one balance to it, though, that there is a cost factor and there is an expectation factor. If we entrench it in the Constitution, the expectation for us is that other groups feel that if they are left out, the Constitution is not fully written, and I am sure that after it is all over we may not have everyone entrenched in that Constitution. But even when we do put those in, there is the next question of the cost factor. Do you feel that afterwards, whatever would have gotten into that Constitution, there would be adequate money available because of the high expectation to recognize and to fulfil those people who have been deprived of their rights, that government would put forward money so their rights could be asserted?

Ms Frazee: This does not speak to your question, but it came to mind as I was listening to your comments: I think it is important to reinforce that what we put into a charter ought to be an articulation of values with which we have some sense of permanency. The listing of specific groups or naming of specific entitlements I think is short-sighted, because I think that invariably, as I said in my presentation, we will leave someone out. We will leave someone out by reason of the fact that our own social consciousness has not yet evolved to include that group or

that particular interest or that particular need. So I think what we articulate in the charter, in the Constitution of this country, is the value that we place upon diversity, upon respecting the contributions that people bring from various perspectives and that people have made historically to the growth and development of this country, and the place that people have within the country and the entitlement to such very basic and important values as dignity and equal opportunity.

Having said that, now we turn to the issue of costs. I think one has to always be very careful in discussing rights from the perspective of what the enforcement of these rights will cost. I say that because if we are prepared to stand behind a principle that says that the rights and entitlement of all persons equally is a priority in our society, then yes, certain costs will flow from that. But once we establish our priorities, we begin to arrange matters in such a way that the costs can and will be absorbed. It does not happen all at once, and I think that is a large part of the point that Bruce Porter from the Centre for Equality Rights in Accommodation was making in his presentation. It is not immediate and automatic and therefore overwhelming. But yes, there are costs associated; yes, we have to make a collective commitment that we will sustain those costs, and we will do so, because the very matter of rights is of such utmost priority for all of us.

Mr Curling: So you are saying that we should not pay much attention to the numbers of entrenchment, but pay attention to the rights that should be protected, and later on the priorities of our financing will then fall in place as it comes along. But again, we must also expect a bit of frustration of those who are waiting in line to be dealt with.

Ms Frazee: Yes. There is no question that as we delay, and as you are well aware in the arguments for employment equity, every day that we delay, people are being excluded. There is no excuse and no satisfaction other than to make the change.

Mr White: I was very interested in your presentation. The issue I would like to speak about, as have many others, is the issue of rights. You clearly establish in your presentation that for women and for the disabled there be a charter of rights which includes social and economic rights, and that is essential. How that is administered, how that is worked out, seems to be problematical. The experience that people have had with courts to this point has been that it is not the disadvantaged who have the most easy access to the court system.

You mention in your brief India's Constitution, which enshrines certain economic and social rights as a value, as a principle, such as we should have here in Canada. We have also heard that in the European Community, because of the culmination of the 1992 effort where their economies will be merged much as ours was with the United States, there is a charter of rights for the entire European Community, and that is done through a process of directives from the ministers of those various countries.

I am wondering if you could comment upon the alternatives to a court system in terms of economic or social rights, such as you have mentioned in India, or any knowledge you

might have of the European system, and why you speak favourably about a court system of enforcing those rights.

Ms Frazee: I am not going to be able to give you as comprehensive an answer as I would like to because I am not as familiar with the situation in the European Community as I would like to be in order to pursue the discussion. But let me say, because I think it certainly touches upon the same theme here, that it is essential, and I think we are only just now beginning to learn how very important it is, for the voice of the people who are directly affected or going to be affected, to be heard, and if I may say, in the first person. So I would emphasize that if we do entrench social and economic rights into the charter, and if we thereby find ourselves with an enforcement mechanism which is dependent upon a process of court action, it will be very important for Canadian society to provide support for the people who have a story to tell, for the people who have a claim to make, to have access to that court which is direct and personal.

1650

That, I realize, is a challenge which has costs associated with it, as Mr Curling was saying, and has associated with it problems of access and of the very intimidating nature of the court process. But I think that with the right amount of sensitivity and commitment and support, there is great dignity to be achieved in the process of individuals and collectives of individuals having the opportunity themselves. I think the courts have the flexibility to be able to embrace and properly serve that kind of process.

Mr White: With regard to the issue of the social and economic rights being enshrined, that of course sets them out. They are enshrined, they are there for everyone to see. The issue of access, though, that kind of assistance so that there is a voice, is more difficult to enshrine.

Ms Frazee: Yes, it is. I think that really is a matter of our social programming, a matter of the priorities with which we govern ourselves. I quite agree with you that this is perhaps not something we can enshrine, but if we fail to provide that support, then our behaviour or our positions or our priorities in our manner of governing are in themselves challengeable because they deny access.

Mrs Y. O'Neill: Thank you, Ms Frazee, for bringing your experience, your wisdom and your sensitivity. I really appreciate it. You have really struggled this afternoon to get us to appreciate what you are trying to say about the challenge of the claimability of rights. We are going to have to struggle with that in this committee. We have had quite a few presentations on this particular subject and it does not get any easier. The more we talk about it and the more perspectives we have on it, the greater the challenge seems to be. I hope we will make the right recommendation in this area, because it is one we have taken very seriously since day one on this committee. I would have asked you more about that, but I think you have pretty well exhausted your thoughts—you have said so—and we will reread them.

You have mentioned something about transportation for the disabled. As well as being pragmatic in these discussions, I think we have to be practical. I do not think it is something we touched on very strongly in our first interim report, so I am wondering if you would say something to help us be practical about that particular right—I would consider it a right—the right to transportation for the disabled. Would you say a little bit to us about the complexities of that? You have touched on the interrelationships of the three levels of government and I would like to know how we could be helpful in putting something into our report that would be meaningful, and perhaps imperative, in policymaking to the provincial government and hence to the federal.

Ms Frazee: The first response that comes to mind is a very simple suggestion, I hope not inappropriately so. As we spoke and considered the possibilities of a Canada clause, I referred to and encouraged consideration of the articulation of broad principles. I think one of those principles has to be a commitment to accommodate the special needs arising from people's membership in certain social groups. That includes membership in the community of people with disabilities. I think that if there is an affirmation in either a preamble or a strongly positioned clause in the Constitution, if there is a commitment to accommodation, then that sends a very important message, a message which hopefully transcends some of the very difficult technical problems caused by an issue which extends across the various jurisdictions like transportation. Transportation is of course only one example.

It does become, as I said in my presentation, very difficult to enforce or regulate a national standard that has any meaningful effect upon the daily lives of the individuals who seek to benefit from that national standard when the standard is affected by the interpretation or the jurisdiction of provinces vis-à-vis the federal authority. So I think the fundamental principle is to articulate and to commit to a principle of accommodation, full accommodation to enable full participation, not as an act of generosity but as the fulfilment of a right for persons with disabilities as well as others who require accommodation.

The Acting Chair: I would like to thank you very much for coming here today and presenting your brief and also for being willing to answer so many questions. If you have any other comments at any point, or if you have any other documentation you think we should look at, please send that along to us. We would be glad to look at it.

Ms Frazee: I would appreciate that, because I think many of the questions in and of themselves were subjects for much longer conversation. I welcome the provocative ideas and the opportunity to have at least a preliminary sharing of those ideas with this group.

The Acting Chair: We are going to have a subcommittee meeting, so I would ask the subcommittee members to stay behind for that. Otherwise, we are going to be adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 1657.

CONTENTS

Wednesday 21 August 1991

Tom Kierans	C-1435
Canadian Ethnocultural Council	C-1439
Canadian Committee for a Triple E Senate	C-1442
Task Force on Canadian Federalism	C-1447
Bryan Schwartz	C-1455
Catherine Frazee	C-1464

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Ontario in Confederation

Assemblée législative de l'Ontario

Première session, 35^e législature

Journal des débats (Hansard)

Le jeudi 22 août 1991

Comité spécial sur le rôle de
l'Ontario au sein de
la Confédération



Acting Chair: Dennis Drainville
Clerk: Harold Brown

Président suppléant : Dennis Drainville
Greffier : Harold Brown

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Table of Contents

Table of Contents for proceedings reported in this issue appears at the back, together with a list of committee members and other members taking part.

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Table des matières

La table des matières des séances rapportées dans ce numéro se trouve à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et des autres députés ayant participé.

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au (416) 325-7400.

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

Thursday 22 August 1991

The committee met at 1005 in room 151.

C. E. S. FRANKS

The Acting Chair (Mr Drainville): I would like to welcome the people of Ontario who are watching the hearings here in Toronto of the select committee on Ontario in Confederation. These are important days for us as we begin to look at the future of this country and to listen to all the views, values and themes the people of Ontario have been bringing to this committee.

I would also like to thank Professor Franks for coming here today to present to us some of his views on the future of Ontario in Confederation. Professor, we have allotted around half an hour. If you could leave some time for questions and answers, that would be appreciated.

Dr Franks: Thank you very much, Mr Chairman. I am from Queen's University and I do not represent an interest group in particular. As a person who studies Canadian politics, I have written on parliamentary government in Canada, I have written about native self-government, I have written about bilingualism and biculturalism and I have written about dissent and about white-water canoeing. I will not be talking about white-water canoeing today.

The Acting Chair: But I can see the parallels.

Dr Franks: Well, we are in dangerous waters and we have to avoid the shoals and the rocks, that is for sure, and not get swamped as we go on.

What I am going to do is introduce some thoughts on the Constitution to you. They relate very much to the outline of the issues you are interested in. I am not going to talk extensively about reform of the federal parliamentary institutions, either the House of Commons or the Senate, but I would welcome questions on them if there are things the members are working on. I am at present working on a study for the federal government on free votes in the House of Commons and, as I say, I have written a fair amount about Parliament, so I am happy to talk about that. But I do want to raise some other questions that, to my mind, are more general issues about the Constitution and about Ontario's place in the Constitution and in Canada and its role in the Constitution amending process.

The first thing I want to do is to make it very clear that I believe constitutions should be short documents expressing general principles and should not be long, detailed documents. Constitutions are not legislation; they are something different. They are more abstract sorts of documents that express the most general principles and the fundamental things in a society, in particular the relationships between people and government and the process through which people's views get expressed in government.

Having said that, I think we have a problem in Canada because there is a tendency to want to put too much in a Constitution. I must say when I looked at the list of topics

that were covered in the briefing materials your clerk sent me, I thought there was a strong risk that this committee might wind up recommending more in the Constitution than I believe should be there. I emphasize that because there is a feeling that if you put something in the Constitution, then it is guaranteed, ensured. That is simply not correct. Whatever goes into a Constitution has to be redefined into working principles of government and policies and programs.

1010

To my mind, the question of whether something should be in the Constitution depends largely on how you want the general principles to be resolved into working programs of government. To make it very simple and crude, and not totally accurate, putting things in the Constitution gives additional power to the courts and the judges to make the decision and takes away from the powers of legislators and legislative assemblies and elected politicians to make the decisions. My view is that, apart from the most general principles of expressing human liberties and human rights, the role of the courts should be reduced and small and the role of the elected officials and politicians should be larger.

Having said that, I believe that things like positive rights—rights to employment, rights to education, rights to pensions, rights to medical care and so on—should not be expressed in the Constitution. They should be expressed through legislation and they should be parts of a government program. I know there is a feeling that if you put these things in a Constitution, you guarantee them, but it simply does not work that way. The courts are quite likely to restrict principles like that very narrowly, and what you wind up doing is leaving the decisions on these fundamental political issues to judges who are neither elected nor necessarily representative. They come from one of the most conservative professions in Canada and tend to represent those views with a very strong view in favour of property in their judgements.

We now have enough work done on judicial decision-making in Canada to appreciate that judges do not always reflect the intentions of legislators or the interests of the public generally, nor are they always consistent one with another, nor are they always totally impartial. It matters a great deal which judges hear a case. There can be severe problems in an overloaded court system. I am afraid that if the Constitution gets amended to include, for example, everything that is suggested in the brief, you would overload the court system. I think it would bring the courts into more difficulty and more disrepute than they are at present. I think that as legislators you would be abdicating some of your responsibilities.

I think one of the reasons why the political processes in Canada are in disrepute is that politicians, generally speaking, are not doing their job of creating the kinds of programs

that are needed in Canada. We are fussing more about the Constitution and doing less about the kinds of policies needed to govern the country. I say that with a fair amount of experience in government one way or the other. My first job was working for the Co-operative Commonwealth Federation government in Saskatchewan in the early 1960s, when medicare was introduced. I know very well that an active, socially responsible, reform-minded government can make major changes, not just in a province, but ones that affect the whole of Canada. Well, I have said that and I will stop on it.

The next point I want to make is about the amending formula. It seems to me we have a real conflict in Canada because we have one of the most rigid amending formulas of any Constitution that I know, and combined with that we have a desire to put everything in the formula, including things that might well be changed from time to time, and getting very specific on some issues. I would like to see the amending formula loosened up. I think the Beaudoin committee of the federal Parliament and its proposals, which are very much like the Victoria formula, are on the right track. We need to have a regional emphasis in the amending formula and get away from a right of veto to every single province. We now know that a veto can be exercised not only by a province, but one member of one assembly can, in effect, prevent a province from making a decision. I do not think we should have the country held up to ransom by such a small minority.

Amending formulas, like most other aspects of the legislative and constitutional amending processes, are balances between majorities and minorities. I think in Canada, and in our amending formula in particular, we have gone too far in giving minorities a right of veto and not far enough in allowing the majority to express its views.

I am going to skip over a lot I would like to say. The last comments I want to make are dealing with the fairly general issue of culture, multiculturalism and biculturalism, etc., in the Constitution. There are different ways of looking at Canada, different ways of dividing it into groups and different ways of expressing political views. I am going to suggest four different ones here and I will deal basically with two of them.

One is multiculturalism. We do recognize that in our Constitution at present. We recognize that there are many different groups and nationalities and languages and backgrounds that make up Canada and that they add to a richness and variety and that these groups need some recognition; that it needs to be stated very clearly that we do not live in a country in which those of English heritage or French heritage dominate the others; that we all share together and live together and have to create our society out of the extraordinary complex mix we have. That is one form of looking at Canada that needs and does have representation.

The second one is 10 provinces. I do not think I need too much emphasis on that. The basis of executive federalism, the basis of constitutional amendments, is provincial, and the basic distribution of powers is provincial, but I do not want to suggest that is the essential way of looking at Canada. It just happens to be a very powerful one.

A third way of looking at it is as regions. The amending formula that was proposed by Beaudoin and the Victoria charter emphasizes regional representation rather than provincial. I happen to believe that is an appropriate way to go.

The final one I want to talk about is dualism. By dualism I mean what our Québécois compatriots would call the English and French aspects, the two founding nations, or whatever you want to call it. It seems to me that our present constitutional crisis comes from the difficulty we have had in coming to terms with dualism in Canada. There are many different ways that dualism can be recognized. One way would be hypothetically to say that Quebec represents the French elements of Canada and the other provinces represent the others or, as many people in Quebec would say, the federal Parliament represents English Canada and the National Assembly represents French Canada. That is one way of looking at it.

The efforts that were made on bilingualism in the federal government over the last 30 years have been to argue that dualism can be represented in federal institutions. Prime Minister Trudeau, of course, was one of the best examples of living, operating dualism, bilingualism and biculturalism, as is Prime Minister Mulroney at present. Another way of recognizing dualism is to have it recognized in the provincial sphere. New Brunswick is the main one that has formally recognized it provincially. Historically the Northwest Territories, including what are now Manitoba, Alberta and Saskatchewan, was officially recognized in the Constitution as bilingual, although that disappeared over 100 years ago.

I want to suggest there are ways Ontario can recognize dualism which I think are essential, or very important anyway, for the future of Canada. To do that I want to step back for a minute and look at the question of culture, multiculturalism and biculturalism. I want to suggest to you there is a difference in the meaning of culture in the term "multiculturalism" as opposed to "biculturalism." There is no suggestion in the idea of multiculturalism that the various ethnic groups in Canada, the immigrant groups, the recent immigrants and the not-so-recent, should have official representation, say, of Ukrainian or Italian or Greek or Portuguese or Cantonese or Hindi or Urdu in the Constitution and that these should be working languages of government at the level of an assembly or working languages in the national or provincial businesses. The idea of multiculturalism is more an acceptance of the importance of these groups to Canada and of their rights to use their languages in their social and ethnic institutions, in their homes and preservation of parts of their culture.

1020

Culture in the bicultural sense, referring to English and French Canada, means something very different. It means that French is a major working language, a dominant language for substantial portions of the population and that English there would be a second language, and so would the other languages involved in multiculturalism. We have a tendency, and I think it is erroneous, to equate the role of French in Canada with the role of the other languages. I am not speaking about native Canadians because that is a different issue. We can talk about that if you want, but

French is the living, working language, the home language, the totality of the linguistic experience for a significant part of Canada and I think that needs to be recognized in our Constitution and it has to be recognized by the various provinces in Canada.

I want to suggest that Ontario has a particularly important role in recognizing it. The reasons are many: that Ontario numerically speaking has the largest French minority of any province in Canada; that Ontario and Quebec are the major provinces in Canada, the heart of Canada; that Ontario and Quebec historically combined to create Canada and we are the major parts of the original Canada; that French and English in Canada and Upper and Lower Canada have been recognized as official languages since 1840 and that one of the first acts of the Legislature of the united Canadas, was to go against Lord Durham's recommendations and accept French as equal with English in the Canadas. That is the foundation of the partnership of the two languages in a political institution.

What I would like to propose as an end thought here is that we in Ontario should recognize dualism. I would like to suggest that over the last 20 years the government of Ontario has increasingly been doing that. The majority of its services are provided in both languages; both languages can be used in the assembly and many places in the courts; the school system is recognizing dualism and I think the time has come for Ontario to state that it is officially bilingual.

I do not think that is a major step in terms of cost. It is an enormous step in terms of symbolic importance and I think it is a more important way of saying that we in Ontario recognize Quebec and Quebec aspirations as legitimate within Canada; that we recognize French as legitimate within Canada; that we appreciate the fact of the two official languages and we want it to continue and that we want to support Quebec in its desire for linguistic and cultural strength. As I say, this is something Ontario can do by itself. It does not need constitutional amendment. I suggest it is the most important single step this committee, the Ontario government and Ontario Legislature could take towards affirming our belief in a united Canada. Thank you.

Mrs Y. O'Neill: Thank you so much for your presentation and for all the work you have done in this area. I have a two-pronged question, but it deals with representation. First, would you make a comment on one of the proposals before us from some aboriginal groups, about guaranteed representation at various levels in government. Second, Mr Clark is now starting to give us some hints of what is in there, and very strong indications that an elected Senate is in there. Would the one E satisfy enough people without the second E?

Dr Franks: Those are very interesting questions. I am quite sympathetic to the idea of representation of the native people in special constituencies. That is not unusual. In the Indian Parliament there are special seats in Lok Sabha, for example, for Anglo-Indians and in the New Zealand assembly there are special seats for Maoris. There are two problems with this in Canada. One is that the range of cultures and language within our native populations are much more diverse than within the non-native

population—I mean extreme diversity; they are far more diverse than the rest of us. The question is, how do you represent them, how do you aggregate that diversity? I am not sure we have a good answer to it.

The question is, who votes and who does not? As I understand it in New Zealand the definition of a Maori for electoral purposes is anybody who is a Maori, thinks he or she is a Maori, or wants to be a Maori. I do not think we could use that as a definition of native in Canada, but think of how many definitions there are. There is the legal definition of status versus non-status, and there is a list with people who are natives and who are not. There is the group called Metis or non-status Indians, which is a fairly large proportion. It might be twice as big as those who are considered status. At present, there are many tribes and bands in Canada that have band lists which have more people on them, or fewer depending on the band, than the official government list; and so you run into problems of who are included and who are not. I do not think they are insurmountable, but they are real problems. I think that is a good idea, I support it. Ontario could do that by itself too if it wanted. I think it would be a great idea.

On the question of the elected Senate, I am old-fashioned in not being terribly much in favour of an elected Senate. I think one elected House is enough. I know a lot of people do not agree with me on that. I do not mind it; I could live with an elected Senate. I can see an effective Senate if effectiveness is limited in the way suggested by many of the proposals—say, the suspensive veto on bills; in other words, a six-month hoist or whatever and forcing the House of Commons to reaffirm its support of a bill before it gets through. I think the powers of the Senate must be drastically curtailed from what they are at present if it is elected, because at present it has virtually the same powers as the House of Commons and I think that is very wrong.

The equality one I have some trouble with because I think the basis for Senate representation should be regional, not provincial. The provinces are perfectly adequately represented in Canada through executive federalism and federal-provincial relations and I do not think the provinces need power but I think the regions do. Again, having said that, the next question we have to ask is, how is dualism represented officially in the federal Parliament? That raises a question about the Senate issue. I do not think it has been properly addressed yet.

Mrs Mathysen: Professor Franks, you said you were concerned about enshrining too much into the Constitution because of the legal battles that would ensue. Yet in light of last week's Supreme Court decision about capping funding for social programs, is there not a need to make sure that the rights of Canadians to those social programs are guaranteed? You remember the old "sacred trust," are we not in danger of losing our right to health care, education, and social benefits if we do not enshrine them?

Dr Franks: I do not believe that at all, I think it is quite the opposite. There is a very high risk that if you put them in the Constitution—remember they are going to be put in very abstract forms. I do not know how long the legislation on medicare is but my guess is that if you

looked at the Ontario and federal bills combined, you would have well over 100 pages of legislation. What you would look at in the Constitution is a sentence or so. The courts would have to define what that sentence means. I think there is a much more likely risk of a government not very sympathetic to these programs tossing it back to the courts if it were in the Constitution, and the courts construing that very narrowly and then the government saying, "Well then, we are perfectly entitled to do what we are doing," as has happened on capping. That is a much greater risk of harming these intentions than to have them expressed in legislation and having the political will to keep that legislation in place and amended. I think that is true for a large number of these things. There is an illusion that if you put them in the Constitution then they are preserved. But what I am trying to say is that the real issue here in any of these things is to translate our ideals about humanity, human liberty and human spirit, and what we want to do with humanity, into government programs.

1030

The question we have to ask is, what role does the political process have as opposed to the judicial processes? My argument is that the political processes should be paramount here. One of the reasons I think Canadian politics is so lively is that we have different ideologies expressed, in that we have an NDP ideology which is probably social democrat, a Liberal ideology which is a mixture of social democrat cum more market-emphasis, and we have a Conservative ideology which is very strongly at present market oriented, although in the past it has had a red Tory element which has a social commitment to it more than I see in some Conservatives at present.

Putting it another way, it seems to me that the way you preserve a view of how these abstract principles should be represented in government programs is through political action, through creating political parties, through expressing your intentions and your ideals. It seems to me that by saying you are going to put them in the Constitution, that the judges are going to do it, what you are doing as politicians is abdicating a large amount of responsibility. As I say, there are problems in Canada now because of the disrepute the political processes are in and I think you are just going to contribute to that more because you are telling the courts to do things they are not appropriately designed to do.

I would say, just as a corollary, that if Ontario goes into the debates on the Constitution with a long wish list, a shopping basket full of things it wants in the Constitution and then says: "We're not going to participate. We're not going to agree on anything unless we get our entire wish list in," there any many provincial governments that are not going to want those, and it is not only going to prevent anything useful from happening on the Constitution, it is also going to bring politics into more disrepute, because I think the most unappetizing aspect of politics to the average Canadian is watching 10 provincial premiers and the federal Prime Minister haggle—I would not want to say "like a bunch of monkeys over a coconut"—in trying to decide what they want to do with the Constitution. It is one of the most demeaning spectacles, and I think there is a very strong risk that if Ontario goes into those meetings

with a large shopping basket, not only is it going to be frustrated but the process itself is going to be even worse for you generally than if you looked for a lean and mean Constitution, and relied on politics and your own political skills to push forward the social programs and the things on which there is profound disagreement between parties.

Mr Harnick: I am impressed with the way you articulate the need for a constitutional document to be short, a document containing general principles. The difficulty we have, because of the way this process has meandered along for so many years, is that more and more people have indicated that they have a stake in what this Constitution is going to say, and more and more people believe that their interest has to be solved at the same time as all the other interests. It is no longer a question of where the priorities are and what problems you have to solve first. It appears that everything has to be done immediately, which generally conflicts with what your theme is. I like your theme; I would love to be able to follow that theme. How do you do it when you have got so many people with such great expectations?

Dr Franks: At some point politics is about making decisions and when you make decisions you have to identify what comes first, what comes second, and what comes third. This committee is part of that decision-making process. I would suggest to this committee that what comes first in the Constitution is ensuring that we have a Canada; the first step in ensuring we have a Canada is to recognize dualism and do it effectively. I suggest that, as I said before, there are some things Ontario can do by itself without going to the constitutional table, which I think would be extremely important.

What you have to do is say that the things that come second and third—the second and third things, to my mind, come after we accept that there is a country, after we accept that there is a process of representation through federal institutions and provinces that give us a political system that operates and can make decisions. The next thing is to ask what kinds of political decisions and goals we want to express through legislation and through government programs. I would recommend that they do not go into the Constitution. We say: "Fine, we agree these things are very important. Now let's sort them out either at the provincial level through provincial politics and legislation or at the federal level where needed or through federal-provincial negotiations where those are needed."

I think, in other words, that you have to identify what comes first and then say the other ones are the ones we are going to work out through politics. I emphasize that if you try to make a fat constitution with everything in it, and keep the amending formula the way it is, you are going to wind up with a lot of problems. One, it is not going to happen and, two, in the absolutely unlikely event that it does happen, you are going to wind up with a lot of things in the Constitution that might want changing over the years and you are not going to be able to change them.

I am certain that ours is the only Constitution in the world that has wood chips in it, but maybe some day people will not want wood chips in it. Now we would need the

consent of seven provinces to get wood chips out of the Constitution.

Look at some of the other things you might well wind up putting in that want changing. I think it is a very dangerous path to take, and what I am trying to say is that somebody has to say, "First things first." I think this is one of the jobs of your committee.

The Acting Chair: That is all the time we have for questions. I thank you very much for coming before us, professor, and for giving us your insights on the Constitution and the future of Confederation. If you have any documentation that you think would be helpful to this committee, I hope you would get that to us so we could look at that.

MARY EBERTS

The Acting Chair: Mary Eberts is next. I welcome you to the select committee. You that you have about 30 minutes, but because there is no one after you I think we have some flexibility with time in terms of questioning.

Ms Eberts: My name is Mary Eberts. I am a lawyer from the city of Toronto. My origins are in small-town Ontario, probably like many of you. As a young person growing up in small-town Ontario I had the opportunity one way or another to become reasonably fluent in French and to spend some time in Quebec.

Like many women of my generation I have been active in constitutional lobbying for over 10 years now. I fear I have to say "lobbying," because women are so seldom included in the main functions of government deliberations on the Constitution. I think I can say a lot of that lobbying has been done in conjunction with Quebec women and, again, like many women of my generation who have interested themselves in the Constitution and in women's voluntary work in very many sectors, I am profoundly interested in Canada staying together and profoundly interested in our using our collective ingenuity to discover a solution for keeping Quebec in Confederation. Most of the national women's groups in 1987 to 1990 when the Meech Lake accord was being discussed made this point again and again, but it was often obscured in the other debate that was going on.

1040

I think from our own experience as equality seekers and as people who have tried to have their interests accommodated in the structure of government, many women are very sympathetic to the idea of what we call an asymmetrical solution to the structural problems of Confederation. It is not lost on us that our Supreme Court has said that often equality requires difference in treatment and we see that perhaps giving Quebec equality and the equal chance to realize its own aspirations may require some asymmetry of treatment in our constitutional arrangements.

I believe many of the reservations women had about the Meech Lake accord arose because the Meech Lake accord did not recognize the principle of asymmetry. It proposed to treat all provinces in the same way and that arrangement, as we saw it, would exercise too great a centrifugal force on the central institutions of Canada that are essential to the well being of women, other equality seek-

ers and many disadvantaged people who need them in order to maintain a simple and dignified life.

I find myself speaking today by invitation to a parliamentary committee on constitutional reform for, I think, the sixth time in the past 10 years. By my reckoning, at half an hour apiece, that is about three hours that I have had a chance to speak of "the woman" in an official forum about the future of my country in 10 years. I can safely tell you that nothing I have said in these official forums in the last 10 years has had an impact, and not content to limit myself to the formal occasions upon which my views are solicited, I have, like many women, put them forward on many occasions in lobbying activities.

Aside from some achievements in 1980 and 1981, I am sad to say that all those countless hours of lobbying have had very little effect. After a while one begins to suspect one is asked to some of these gatherings—not yours of course—simply so the people who are organizing them can point to having consulted with women.

I am encouraged by your interim report and your commitment to including women individually, collectively and as constitutional experts in the next stage of our work. I am also encouraged by the formal and open commitment of this government to employment equity and I suppose the combination of those two things means that in addition to asking a lot of women to come as volunteers to your committees, you also have a whole cadre of real women-centred women academics and lawyers busily working away on Ontario's constitutional position as civil servants and as advisers to government. I expect soon to be greeted by the public revelation of the identities of those women who are working to establish the formal constitutional position of this government.

I also expect, given your formal commitment to equity and to consultation, that this government is investing a fair amount of money in community outreach and development so minority groups, equality seekers and others who have a social or educational or other agenda that is very well formed can be assisted to translate that agenda into constitutional terms. Again, I expect the announcements of those provisions will be made shortly, as I have seen none of them so far.

The last time I came before an Ontario committee studying the Meech Lake accord that was, I expressed considerable annoyance with the exclusion of women from constitutional process. From my perspective, nothing has changed. There are now more committees, so that women who are interested in the Constitution have to take more time off work to allow their views to be harvested by officialdom, but women and other equality seekers are still as excluded from the process as ever they were. But this exclusion and my recognition of its recurrence has caused me to think more deeply about what is actually going on here. I know in your invitation to me you asked me if I would talk about process, so here I am.

Women and other equality seekers, like many who appear before constitutional committees, are clamouring to be allowed into the constitutional process, but I believe that clamour and the knocking on the door of those engaged in the constitutional process is to some extent a surrogate

activity. The process of constitutional reform is a stand-in for something else. It is a stand-in for the whole political system.

Our democracy, as you doubtless have heard before, is profoundly unrepresentative. Our principles of democratic government—the ones we learn in our introductory political science courses in first-year university—tell us we have representative government because cabinets are chosen from those with the majority of the seats in an elected Legislature and the principle of cabinet and government responsibility to the Legislature is in operation. However, I think the events of the past 10 years or so and the advent of a charter-democracy has acquainted us with other groups who now realize they are unrepresented in the political process.

We have, since women have begun to celebrate each year the “persons” case, had it drawn quite apparently to our attention that women may have become persons by reason of a decision of the House of Lords in 1930, but women and other minorities did not in Canada finish getting the vote until the 1950s and the 1960s. That is only 30 years ago that the franchise was extended to most people. Disabled people are still working in the courts to get the franchise.

The political institutions, the bureaucracy and the organizations of the economy, are profoundly unrepresentative of women and minorities. The only people who are really represented in elective government and in the bureaucracy in our country today are able-bodied white males who speak English and who speak French and whose origins are, for the most part, English and French. These men dominate the parliamentary system, the bureaucratic system, the political system and the economic system, just as they dominate the making of these kinds of decisions around the world.

Given our near total exclusion from all of these, I cannot be surprised that women told you at your first set of hearings about their concern about low incomes, absence of health and social services and violence against them. Women suffer these harms because we have little or no power in our households and in our society to stop them. The fact that there is a women's movement at all to come and address you, when so many women have to struggle against such odds for survival and dignity, is a miracle.

Well, what to do about this from a process point of view? We are told the country is in crisis. We know the country is in crisis, that it may break apart if a rapid timetable of constitutional change is not adhered to. Social change affecting women and other equality seekers takes a long time, we are told. Attitudes must change. We must prepare the ground. We must move public opinion. Let's have a few more royal commissions.

Now, royal commissions are not to find out if there is a problem. We all know there is a problem. The royal commission would not have been appointed if it had not been obvious to us that there is a problem. The royal commission fulfils a peculiar function in the Canadian democracy. It is there to assemble the incontrovertible scientific proof of the problem, in our case how women are treated, that is necessary before the huge burden of proof that women must meet can be satisfied. There is to be no social change in our society unless an almost insurmountable burden of proof can be met by those who ask that change come about.

You all know the experience in Ontario of the Social Assistance Review Committee. Everybody knows there are poor people in Ontario and they suffer. Nobody has to document that for us to know that, but that committee had to get together and to work to prepare the evidence that would meet the insurmountable burden of proof. That burden of proof remains virtually to this day unmet. There is little social change for those people even now.

We are told we have to work to a very tight timetable to make fundamental constitutional change before the country will decide if it will create the condition that will afford women and other equality-seeking minorities greater participation in democratic structures and the simple social, economic and legal conditions that allow them to lead simple and dignified lives without being gunned down in our classrooms or on our streets or shot in our beds or our workplaces by our spouses and our “lovers.” I use that term in quotes.

1050

If all the harm that is happening to women on a year-in and year-out basis were grouped together into one month so that the suffering and the carnage could be irresistibly seen, men might realize that women are in crisis too, and that the conditions for our crises are created and re-created daily by a political and a social structure that excludes us from real power-sharing.

This brings me to the Constitution. What is the Constitution but a document that outlines how power will be shared in our society? Traditionally we have seen the Constitution as a document that outlines how power will be shared by governments, all of them run by men. The last time around a little chink was made in this armour. Some power was shared with ordinary people. That was done through the charter. That is why so many people in this country value the charter so highly. It is the first time anything official ever entrenched in the Constitution gave them rights on a large scale.

There had been small attempts before for some people in the country, some minority language rights, some educational rights; but not across the country, only in certain parts of it. That is why the charter has iconic value to many people, because it is the first time that a person's right against government and against exclusion by government has ever been recognized.

What is happening now? Our Constitutions so far have been made by Fathers of Confederation and they talk about how men who run governments will share out the power. The same process is being repeated before our very eyes. A new configuration of power sharing in our society is being prepared now behind doors that are closed to most women, most equality seekers, most minorities, and by people who are not really aware of their interests.

I know legislators are involved in this process. They are involved in the public side of it. My quarrel is really not with legislators, not with the ordinary MP or MPP, because, as I said in my presentation on the Meech Lake accord, I believe that the institutions of executive federalism exclude MPs and MPPs from this process almost as much as they exclude ordinary people.

There is a good example going on even now. More legislators of course have become involved in the process of constitutional change since the debacle of Meech because that is the lesson that governments thought they learned: Get more committees out harvesting more views. But while legislators are busy harvesting views and writing reports that will go to bureaucrats and to the people who will sit down at the table, there is a small group of people in Seattle negotiating what is really the power-sharing document for the next 10, 15, 25 or 50 years of our future, and that is the new version of the free trade agreement. Those negotiations are going on behind doors that are closed to legislators and where the main interest to be served at the table is how to make North America and Central America a happy home for international capital. So legislators are just as excluded from the making of documents that talk about where power will lie and how it will be distributed in our society as are people. Not that legislators are not people, but you know what I mean.

All of these concerns make me say that concern about process should of course translate into concern about substance. I want to try now to put some substance to the proposals that are coming on to the constitutional table. I am going to take my cue for this from a Supreme Court of Canada judgement under the charter. It is the judgement about the Saskatchewan election boundaries. It dealt with the meaning of the right to vote and to hold elected office or stand for elected office in the Canadian democracy.

The majority decision of the court talked about the meaning of that right to vote under the charter. As happened in the Meech Lake accord, the courts interpreting the charter are actually ahead of the people who are running these discussions. People who were setting up the Meech Lake discussions did not realize that the courts had already, at that time, recognized the constitutional stake of equality seekers. They missed that, to their great discredit, just as now the charter and interpretation of the charter has pushed the debate further even than those now running the process in this new round seem to be ready to acknowledge.

In the Saskatchewan election boundaries case the court said, "The concerns which Chief Justice Dickson in *Oakes* associated with a free and democratic society, respect for the inherent dignity of the human person, commitment to social justice and equality, respect for cultural and group identity and faith in social and political institutions which enhance the participation of individuals in society are better met by an electoral system that focuses on"—and here is the magic phrase—"effective representation than by one that focuses on mathematical parity. Respect for individual dignity and social equality mandate that citizens' votes not be unduly debased or diluted,"—here is another significant phrase—"but the need to recognize cultural and group identity and to enhance the participation of individuals in the electoral process and society requires that other concerns also be accommodated."

They took a clear stand against the principle of one person, one vote in the way it fed through to the design of electoral boundaries and said instead that the design of electoral boundaries had to accommodate cultural and group identity and be there to enhance the participations

of individuals in the electoral process. This they called effective representation.

I believe that the principle of effective representation should be embodied in Canada's basic constitutional documents. It is not now there unless you can see the beginnings of it in this decision. How do we do that? How do we put something in the Constitution that will embody effective representation?

Unlike your previous speaker I am not in favour of a totally lean and mean constitutional document. I believe it can include something more than a basic articulation of a one- or two-line principle. I believe that Canadian constitutions always have done that. There were in the British North America Act provisions about who is going to vote in the Algoma district as well as all these wood chips that the previous speaker was talking about. I think if you go back to look at some of the other basic constitutional documents we like and if we get the unedited version of those, we will see that constitutional documents have always been concerned with the concrete and the particular.

The Magna Carta, when you look at an unedited version, had quite a lot of provisions in it, not just about wood chips but about loads of wood and about the free passage of loads of wood over land that was held by certain royal or noble land owners, because free passage of loads of wood had enormous economic importance. Those were not edifying, those principles, and they do not often make it into the boiled-down versions of Magna Carta that people hang on their office walls, but they were there. So I do not have any hesitation in talking about putting things in a basic constitutional document.

What I would stress, however, is that there must be provisions for the enforcement of things that are in basic constitutional documents. We already see in the charter, which was intended to be enforced by individuals against government, great difficulty because the courts are taking a very narrow interpretation of how to enforce basic constitutional guarantees. Their approach to remedies seems to be very narrow.

There are provisions in the Constitution Act of 1982, particularly those of section 36 which talk about regional equity and social programs, that do not have any enforcement provisions at all. If there are provisions in the Constitution that address this issue of effective representativeness of government, then I believe they must have good enforcement provisions in them.

I have been speaking informally with some friends and colleagues about what might enhance the representativeness of our Constitution and I put forward a few proposals. They probably will not meet with your approval right away, but as I mentioned at the beginning, I am used to that.

1100

I believe that genuinely representative government for women and men of all races and ethnicity must be a basic tenet included in the Constitution, however it is configured, and the guarantee must affect the elected House of Commons, the elected Senate—if it is made elected—the legislatures of all the provinces, federal courts and tribunals, provincial courts and tribunals, and the public service of all the units of our government.

I believe there should be a basic guarantee of proportional representation for women and that included in it and working with it there should be a basic guarantee of proportional representation along racial and visible minority lines that would include aboriginal people.

These basic guarantees should not simply occupy a small corner of the seats that are available in legislatures. Too often the pattern of equity or affirmative action is: Segregate a few seats or a few opportunities over here and let women and visible minorities and disabled people sort of squabble over who gets them. Meanwhile, white males will dominate all the rest. That is a very inappropriate model. I think if we would divide them, first of all, proportionately as to men and women in the population and then make sure that both the men's side and the women's side, if you will, reflect adequately the representation of visible minorities and aboriginal people in our country, we may be getting somewhere. That is from top to bottom; from elected officials through government through all appointments. Only then will we have effective representation in government.

What else? In light of the recent cap decision of the Supreme Court of Canada, I believe there should be a principle in the Constitution that stresses clear federal responsibility to fund to an acceptable level of social assistance and income support, including social services to the disadvantaged, health, training, research and post-secondary education. By an acceptable level, I mean a level of national standards determined in an open forum made up of all levels of government with substantial consultations with user groups; not just service delivery groups, user groups: poor people, students, people who use these services.

In view of the free trade negotiations in the first US round and in the present round and in view of the great difficulty we have had enforcing in this country obligations in the human rights area that Canada has undertaken in the international community, I believe that our Constitution should include, for Canadians domestically, a constitutional right to have our governments abide by international conventions we have signed. That is a constitutional right that would be enforceable by Canadians against Canadian governments and not depend on reports that are made in international forums.

I believe as well that there should be a constitutional obligation on our governments not to take on international obligations if they will result in disadvantage to women and other vulnerable minorities in Canada or internationally and that the enforcement mechanism for this constitutional obligation should include an obligation to make a full and open revelation of the government's views of the probable consequences of any such obligation before it is undertaken and an opportunity for public discussion and debate and a method of national review of those obligations.

We signed the free trade agreement without allowing ourselves as a nation the same review and cooling-off period that provincial governments afford to people buying pots and pans on their doorsteps. That seems to me to be an errant exercise of unrepresentative government. We may need to enhance, in our basic constitutional document, access to the training and education that will enable participation in productive labour. We see that particularly emerging as the

result of what happened as the sequel of the last free trade agreement, where during the negotiations it was said that people can be retrained to absorb the impact of this agreement and then no training opportunities were forthcoming.

It may be that we will need to have rights in the legal system for victims, not just people who are suspected or demonstrated of crime. That is, our legal system does not seem to afford to the victims of crime enough purchase to be taken seriously.

We may also need access to basic subsistence that makes the right to life in our Constitution more than a gleam in someone's eye. I say "may" because there are already cases before the courts testing the limits of the existing charter guarantees, and we do not know yet whether they will result in a successful outcome.

We also need in our country, to ensure the economic survival of the most fragile and those who are the most impacted by international developments, the complete removal of all barriers, direct and indirect, to the movement of persons, goods and services from province to province so that when someone trains as an optician or a nurse or a welder in one province, that person can if economic necessity requires it move to another province without having to go through agonizing testing and retraining.

Those are my proposals. They are made in the context of affirmation, as I said at the beginning about a recognition of Quebec's aspirations; and I add these other elements, which some speakers may say are not priority elements now, because this round of constitutional discussion is likely to settle a lot of things for a long time to come. We will not have another such crisis-driven round for many decades. If some of these basic restructuring activities in favour of those now excluded from representative government are not undertaken now, we will enter the 21st century with an underclass of women and minorities still vested in our Constitution.

The Acting Chair: You have certainly touched on a great many areas, and I thank you for doing that. We will begin with Mrs Mathysen.

Mrs Mathysen: I would like to say it is a great pleasure to meet you, and I want to thank you for your very profound presentation. I was a schoolteacher for a number of years, and one of the things I learned was that no matter how eloquently, how precisely you state something, people do not hear it until they are ready to hear it. I hope we are ready to hear it.

There have been some concerns about the narrow interpretation by the Supreme Court of charter rights. I am wondering, is there a remedy to make that court more representative? Can we get around that by having a more representative Supreme Court?

Ms Eberts: The proposal I have put forward today about representativeness in institutions would include all federally appointed courts and tribunals. I think the Ontario government in recent years has taken great initiatives towards making its own provincial courts more representative and has demonstrated that it is possible to do so and that embarking on this process will attract very high-quality candidates to the bench. Concerns about quality, I think,

need not deter us from having that sort of approach. I would like to see the approach that has been demonstrated here so successfully, applied across the board.

Mrs Marland: Ms Eberts, it is a privilege to hear you this morning. I have certainly known of you by reputation, and your reputation is phenomenal. I really have been admiring all your work and all the compassion that you have shown in your practice for many years. Interesting to hear you talk this morning about the exclusion of MPPs like ordinary people. I was encouraged to hear that because last week APEC told us that we were liars, and I am encouraged to know that you believe we are ordinary people trying to do a job.

Thinking back over some of the history you were tracing, I could not help but think perhaps of a federal commission—I am older than you are, but perhaps we both might remember—the Judy LaMarsh \$4-million commission into the influence of violence in TV and media. When we think through to, I think it was 1975, the first International Women's Year, that was also the year when I was a trustee on the Peel board and Margaret Wright was shot in the classroom in the Brampton Centennial Secondary School along with some other students. I remember what an effect that had on me as a woman, an elected person. My empathy was with you this morning when you were somewhat emotional about that aspect of our lives as women and our commitment to serve as representatives of people, not just representatives of women.

I am the mother of a daughter who parks in an underground garage on a daily basis, and my daughter Ruth really is representative of a lot of women and their lack of choice day by day. When you talk about enshrining women's rights, which I agree with totally, I am still wondering how enshrining those rights in a Constitution is going to protect my daughter in that underground garage for the next number of decades, because our progress has been so slow in the last few decades. Since having it in the Constitution would only be the beginning, what I would like to ask you is do you think that, combined with your suggestion of guaranteed representation, proportional representation in government would expedite a solution to the problem? We have certainly heard about guaranteed representation for our aboriginal Canadians, and I would like to hear from you if I can really be encouraged by that being a solution—I know in the long term—but in the short term?

1110

Ms Eberts: I like to talk about effective representation in this context, and talk about it not just with respect to women but with respect to women and minorities. I think one of the problems you mentioned, the underground garages, for example, is the result of the brains of those who have not been concerned being applied to urban design and the design of buildings. Also, it is a resource problem because it is not economically feasible to have a lot of people patrolling downstairs. Both men and women are killed underground. I am not saying that effective representation will answer this, but I think it is more likely that a government constituted that way would have different rules in its building code, for example.

When we talk about people being shot, and you speak as a mother, I cannot help but think of the black mothers in the housing projects and in the major cities who wonder when their sons go out whether they are going to get a phone call saying that they have been shot because they happen to be black and driving a car on a freeway. I think that a police commission and a police force that was more representative or governed and directed by a more representative group might in the long run not have those attitudes.

I do not think the fact that it is going to take a long time to make these changes is a reason not to start them now and not to start them in a major way. If we let this opportunity go by, it may not come again, and we will be back into royal commission land. I have a lot of respect for royal commissions and have used their research often to effect change or to work for change, but they are not the only answer.

Mrs Marland: Would you agree that a lot of royal commissions have come forward with a lot of very good recommendations—and I am speaking particularly in respect to women—and they have never been acted on? That is the frustration I feel.

Ms Eberts: This comes back to the political will the previous speaker was speaking about. Political will does not exist in a vacuum and it does not hover over the political system like an incandescent spirit. Political will comes from individuals who are in the political process and who are pushing the political process. If you get more people into the political process who have these agendas, then the political will will be there. A government that has as its primary aim or its primary political will the service of the international movement of capital will not be as concerned about this as a government that has a real social agenda, whatever the political party may be.

Mr Curling: I had quite a few questions to ask you, but I think time will not allow me, neither will the Chairman allow me to give you that time, having other people coming forward.

I was going to express, in the context of some people that I am hearing from daily, that the great faith one should have in the rewriting of this new Constitution will reflect them, and that some people hitch their hope on a certain line or phrase and say that, having placed that in the Constitution, we are fully protected. I presume the blacks in Nova Scotia who cannot get into a bar because of their colour realize it does not matter what is in a constitution. The hope they have for what will be expressed in the Constitution, and the limited amount of people coming forward into this committee is indicative of the kind of things they are wishing for.

I feel that putting a lot in the Constitution will not be very helpful compared with legislation, an enforcement of certain rights on the level of, say, provincial legislation, and hoping, of course, that the court will rule. I feel that courts only interpret. I get the impression we feel that courts are the ones that will rule, and that courts interpret the law as they see it.

My question is specifically on employment equity, since you mention that. Many people see employment equity as

women's rights, so therefore other rights of employment are put in the Constitution. Then they are seen as a struggle for women, and furthermore of white women. If their hope is based on the Constitution, do you feel there is further hope for those people who seek employment equity—and the governments have been very, very slow in bringing about employment equity—whether waiting for it to take place in the Constitution would raise their hopes more?

Ms Eberts: This is complicated, there are several questions in there. Let me see if I can answer them all.

With respect to the issue of concentrating more on provincial legislation and enforcement, instead of putting rights into the Constitution, I suppose I am greedy in my isolated exclusion from power. I think it is very useful to try to do both, and this stems from my belief that people who have been excluded from making governing decisions, benefit best in a situation where they can take advantage of the conflict of countervailing power. This has happened traditionally when excluded groups have played off the federal government against the provincial to get social welfare programs. It has happened at the federal level, where one political party has played off against another to enhance social welfare benefits. It has happened both in Canada and in the United States in the interplay between the courts and the legislatures, that the court's articulated principle: If we like it, we can push governments to implement it; if we do not like it, we can push governments to change it. I think always we have to keep an eye on the countervail and in maintaining these countervailing structures.

I think as far as employment equity is concerned that it is a very welcome development, and I think our present Constitution mandates that employment equity measures not just benefit the white women that you mention, but benefit all groups who have been excluded. What I think has been happening over the past few years as employment equity efforts have been trying to get off the ground is that those who have been designing them or people who have been thinking of them, have thought, "We will allocate a small number of positions for employment equity, then we will make people fight over them, and we will keep all the rest for ourselves." Real employment equity would make available a generous number of positions so that the excluded and the historically excluded, would not have to fight among themselves. All the positions would come from people who have, historically, kept them to themselves, regardless of their merit. That is the way I would prefer to see that going.

It sometimes comes as a shock in the women's movement, as a white woman, to be told that we must share our power with others and with visible minority women. My first response is, what power? I have come, over the years, to realize that—from a different vantage point—what we have looks like a lot of power. I and the organizations in which I work are happy to share such power as others perceive us as having, because it is only by sharing what we have that we will be able to benefit everyone.

1120

Mr Curling: I want to follow this up in a very domestic way to show you what power white woman should

share with other women. When the wage and price freeze came about, people on the lowest strata who were very much visible-minority women could not get an increase. What happened around the nation was that secretaries and so on were upgraded to executive assistants to their bosses. The jobs that changed were white women's jobs. Sharing of power would have meant those white women speaking out to say, "That is an injustice, although I benefit from it." I think there is a consciousness there. Even writing those things in the Constitution will not embrace those people—it will not, in itself. Even when we change the police laws, it will not stop the policeman from shooting.

I have two daughters who, of course, are black, who I worry about each night, because they drive. Do they feel protected—they are Canadians—do they drive feeling Canadian? Do they have the fear of being women, the fear of being black? I still feel that even though we put it in the Constitution, and everyone is struggling to entrench everything in the Constitution, I think the pecking order will come: Those who have money will be addressed through the courts and their rights will be asserted. Do you feel strongly that the emphasis then should be placed on legislation, or trying to get all those things in the Constitution as a symbol?

Ms Eberts: It is a difficult question. I think that having things in the Constitution does have a powerful symbolic value. Where we run into difficulty is where we cannot get all we want in the Constitution, so that the people who hold the power choose for us what will have symbolic value. It is often not what the community would have taken as its first choice.

I do not think that getting things into the Constitution is the end of the game. I was very active in 1980-81 getting equality guarantees into the Constitution, and very active setting up LEAF. LEAF is to do litigation, to bring about an effective implementation of constitutional rights. LEAF has, within the past year, formally adopted what we call a diversification policy in order to make ourselves develop our consciousness about how, as middle-class white women, we are unconsciously excluding black women from what we do and how we set our agenda, so that we have a much more open and inclusive agenda-setting process, or are working towards it. That is very difficult on all sides. It has been difficult for black women to make us do that, and they have shown a lot of courage to bring to our attention what we have not been doing.

It has been very difficult for white women, who sense themselves excluded from power, to say, "You are right, we have got to do this differently." But I hope that if we do this right within the women's movement, we will become a place where there is a lot of experience about how to do it right everywhere. I am very encouraged, first of all, about being made to try, and I hope I am out of the stage where I was made to try. Now I am very enthusiastic about trying, because I see that is the only way to have any hope for the future, to go beyond the formal and into the real sharing of power.

Mr Harnick: A very quick question, but a difficult answer, I suspect. I know LEAF has been very proactive in terms of using the charter, litigating, demanding answers

and seeking a pattern of how the charter is going to work over time. You really have not had much opportunity to talk about the charter today. I know your experience with it is probably more vast than most litigators. What do you see as any glaring weaknesses in the charter that we should be addressing?

Ms Eberts: This question is both an attractive and a dangerous one for me, because when I am not a charter litigator, I am a charter lobbyist. It took us such a lot of time and trouble to get the guarantees we now have into the charter that I am very reluctant to open it up again. I would like to see the charter left where it is and things put in the rest of the Constitution.

I have been exploring recently the idea of strengthening some of the guarantees I have talked about: the rights of victims in the criminal process and also a basic right to life and subsistence. Those cases are working their way through the system now. It may be that some remedial work is necessary if the outcome of those cases is not positive towards those rights.

There has been a fair amount of discussion in some circles about the idea of including a social charter in the Constitution. I think it would repay looking at what has happened around the politics of a social charter in England. A number of us have been active trying to get a combination of a charter as we know it and a social charter as entrenched in the British Constitution. The Major government has just introduced what it calls the citizen's charter. It actually has a fair number of quite right-wing features to it. It would allow, for example, actions by citizens against trade unions that resulted in the trains running slowly, so it is a way of turning grass-roots actions through the courts against collective or trade union action. I am not passing any comment on the trade union situation in Great Britain, but this whole area is one that I would approach with great caution—not just opening up the charter but also exploring the social charter.

My last word on it is that whatever guarantees we have, whether by way of improving the charter or adding social guarantees to the Constitution, we must be very clear in the basic document about how they are to be enforced. Otherwise they will amount to nothing, or they could be used against the people whom they are intended to benefit. It is very difficult, for example, for people with slender means to have access to the courts to enforce their charter guarantees. That is why we have LEAF. That is why there are several organizations now that have sprung up to do litigation in the multicultural community, the disabled community and so on, because unless you pool your resources and get lots of volunteer help, you cannot go to court. It is difficult. This is why I concentrate as well on the political side of making the institutions of government more representative. I do not think you can do everything by way of a charter. It is made to carry too heavy a load if it is the only game in town.

Mr Harnick: We have heard many witnesses who believe in a social charter but at the same time believe that the enforcement of a social charter should not be left to the courts. I personally agree with that because I do not think the courts want to be in a position of interpreting a

government's social policy. One concern I would have is that a social charter starts us on a process of concentrating on collective rights and forgetting about the rights of individuals. My concern is that if a constitution has a social charter, I would be concerned that it lessens the import of individual rights and the actual charter that we now have. I wonder if you could comment on that.

Ms Eberts: I think this is a very interesting area on which there should be a lot more work in academic circles. I think our concept of individual rights has sprung from the growth of the liberal democracies in the 19th century and earlier in the 18th century. When you look at it, the concept of individual rights that they knew was actually articulated within an envelope where only white male Europeans with a certain level of income had any rights at all. Individuals were considered as the holders or recipients or beneficiaries of individual rights only if they belonged to a group. Because that group occupied all the positions of power in the society, it was not seen as a group. Its rights were not seen as the rights of a collective—they were seen as the rights of men, with a capital M. The fact that they were European white men of a certain age, at one point, and a certain economic status, just passed into the mists of history.

1130

One of the things that has been happening in the academy in the last 25 years is that all that stuff is being unearthed and put into context. That means we have to go back and look at all of our notions of individual rights, which are important but have to be looked at in the context that they are individual rights that grew up for a certain group of people. If you read Rousseau, you will see he was talking about a certain group of people. Most of the 18th and 19th century philosophers were all Europeans and the only way they talked about people who did not live in Europe was as the romanticized or degraded concept of the savage. Now people are beginning to recognize it for what it was. They did not include women at all. So that is where we get our philosophy of individual rights.

It is very difficult, without a lot of careful thought, to figure out how that fits in with the new collective rights. I am encouraged by the work that is going on now, but more and more has to go on so that we can merge those two concepts where they deserve to be merged. I am not so in favour of collective rights that I believe the individual should have no rights against the state. I believe it is important for the individual to have rights against the state, but I do not believe that the individual should have rights that are so supreme that they allow that individual to inflict harm on others without any chance of being curbed.

The Acting Chair: I want to thank you very much for your comments to the committee today. Your passionate advocacy has been worthwhile to hear. For me as the Chair, it has been helpful to have you challenge us, both as legislators and as people who are part of a system that has shown itself unwilling to take seriously at times the needs and aspirations of all people in society.

ONTARIO COALITION AGAINST POVERTY

The Acting Chair: The next presenter is Mr David Kidd. I am glad that you have been able to come before the

committee and talk about some of the concerns of your organization, the Ontario Coalition Against Poverty. Our time is about half an hour. If you could leave a substantial amount of time for questions and answers, that would be very helpful.

Mr Kidd: It depends on your questions. I probably will not be taking much of your time. We in the antipoverty movement have spent some time on this matter, but I am afraid most of our work generally is the bread and butter of surviving day to day—that is our primary concern. Constitutional matters are important, but we have not spent as much time discussing our presentation as on other matters.

I am before you representing the Ontario Coalition Against Poverty. We represent not only 14 communities across Ontario but also 10 organizations right here in Metro. The basic position of our organization is that we feel the first business of Ontario is eradication of hunger, homelessness and poverty.

One of the comments we would like to make right off the bat is that we feel what must be done around the Constitution is a concept of democratizing the Constitution. This is a word that is thrown around a lot these days, not only in political, but in local circles; but as a group that represents a group that does not feel it has much democracy day to day, we really feel that has to be done. I just want to emphasize that.

We would like to start with a comment or two about particularly important groups that we are a part of. First we would like to declare our support for the right of self-determination of the first nations, and we hope this constitutional committee will support that. We do not consider it is just a question of Ontario's boundaries. The first nations' boundaries are a little bit wider than that, but we would like to declare that first. We have native organizations within our ranks.

Our second point of reference is that we would like to be very clear and forthright in the right of self-determination of Quebec and the people of Quebec. We feel that is somehow being hedged on in most of the constitutional issues. People are trying to skirt that in new forms of federation and new ways of discussing the rights of francophones. Right here in this city, after the Hurons and the Mississaugas, francophones and Québécois were here first. We feel there has to be a method and a means for the people of Quebec to decide their future.

Now we talk about what we feel as ourselves, as Canadians. As Canadians, we reject the idea that the rest of us are seen as a tenth of a part of the current puzzle, and that therefore other programs and social services should be deflected down to the various provinces, given people's reference to the community of Quebec. We feel very strongly that universality and other forms of protecting social services and other programs still have to be applied within Canada. We reject any form of breaking these down to provincial jurisdictions. We have been lucky here with the situation in the last decade—but we are only too well aware of what is happening in other provinces across the country with the reinstitution of "workfare" and other forms of abuse to people who are poor.

There are a number of rights we would like to register as our concerns. I know other people have talked about this and it came up in one of the questions for the previous witness. One that we feel is very important to register is constitutional rights. If you feel that it must go under a social charter, so be it, but we feel economic rights are as important as the right to vote. I am afraid it is not seen in this way. It is still seen as the kind of thing, "Well, let's talk about it in the pages of the newspaper or within constitutional discussions," but every day in Ontario there are people who are denied the right to a job, the right to a living income, the right to a decent place to live, the right to appropriate health care and the right to a decent education. We see these five as economic rights even though you may not see housing and education in that way. Currently they are only seen in relationship to your access to a dollar, and we just want to make it very clear we see those as fundamental rights of all Ontarians and they have to be protected.

We would also like to remind you, as you have gotten a deputation, I believe, from one of our sister organizations from Sarnia, that Canada and Ontario both signed the International Covenant on Economic, Social and Cultural Rights from the UN, and we would like to hope that you would live up to that, which basically also substantiates and supports a number of these economic rights we have mentioned.

The other area of rights we would like to mention is that of political rights. I am afraid these are not always mentioned because often people are under an illusion—and it is easy to feel that illusion, given the situation of political rights throughout the rest of the planet—but let us be clear that within the confines of our so-called democracy, not all our citizens are given the right to organize, vote and express themselves in the same manner that others are. In terms of the right to organize, there are still difficulties for some groups in communities in forming trade unions, and hopefully some of these items will be coming up in other areas. Social assistance recipients are often blocked from forming their own organizations. Tenants are often blocked. We would just like to make it clear that we feel the right to organize has got to be a principle.

1140

Access to information is becoming a much more important part of people's democratic rights. Currently, as it was revealed many years ago by the Kent commission, the federal commission on the media, or others, we have a growing monopoly within the media and a lessening degree of access of minority and poor Canadians to the media. We would like the Constitution at least to call for improved public access to the media. This is outside the Constitution debate, but we see that it is possible only through broadening public media, broadening access to public media, not going the way that currently is happening, which is privatizing it. Currently, we feel, within the discussion that takes place every day, the lives of poor Canadians are under-represented. To give you an example, we have recently witnessed the editor of one of the media outlets waging a campaign against welfare recipients. I will not refer to her in these hearings, but she was able to pursue lies within the media, and we do not have equal

access to challenge her within that setting. Basically, she could print those stories every day.

Last, and this is something a number of us are fairly clear on, there still is not universal suffrage within Ontario. Homeless people are still not guaranteed the right to vote in the province of Ontario, let alone within municipalities. I am afraid elections and democracy as we know them are still based on property rights; that is, whether you have a place to stay. We would like to say clearly and finally that we hope the Constitution would at least establish universal suffrage in the 1990s.

In terms of democratic rights, I am afraid we still feel the other aspect of elections is that you can give people the right to vote, but then there is the right to choose who the candidates are, and the majority of candidates generally are those who have the greatest amount of money. Again, this is outside the realm of this constitutional hearing, but we would rather see tighter spending controls allowing other groups in society to stand and actually give their positions a chance to be heard.

One other area of special rights we would like to mention, before I conclude, is that we feel there are certain groups within our society that deserve special rights, due to oppression or discrimination that they have received, and we are considering it special because we would like to see that reversed. This is not in any order of prioritization. At this point we see all four of these groups—and there are others—but we would like to specify that women, communities of colour, disabled people, and gays and lesbians at least have rights against discrimination, violence and hate propaganda, and we would like to see them have established rights to equal access to all services, resources and political institutions. These are groups that have been denied this access historically, and we feel they should be specified as special groups today to bring them up to standard. As you can see, for one example, there are municipalities passing the buck even about denying gay and lesbian spouses access to equal rights. Basically they are waiting for the provincial legislation to take a stand as opposed to giving leadership. We would like to see another form of political protocol enforced.

I am sure you have heard this from other people, but for us who are literally engaged in it—the majority of our membership is literally into daily survival modes of activity—we would just like to make a couple of references: that constitutions are important, we would like to emphasize that, but they can also just be pieces of paper. We would like to see a Constitution that would not only protect and establish these rights we have mentioned, but we also need to see action from this Legislature in carrying out the programs, enacting legislation and giving leadership in the elimination of poverty.

Currently, we find that the federal government is playing a constitutional tune with its BMW sound system while the rest of Canada is burning, in particular due to its actions in promoting privatization, the dismantling of social services, contracting out and what they have called “free trade.” It is free for them, but Canadians, literally and figuratively, are paying the cost of free trade in terms of our rights and institutions that are dismantled. We would

like to see noble constitutions and the words they are based on followed up with noble deeds. I will stop there. There are many other comments we would like to make but, in terms of my organization, these have been the areas we have agreed to comment on today. Thank you very much for your time.

Mrs Y. O'Neill: You made a statement about franchise rights for homeless people. My understanding is that this is in the implementation stages for the 1991 municipal election. I am sure you are aware of that. Can you tell us how you feel that is going to be implemented? You would be much more conscious of the snags or pitfalls we could get into there. I am sure you would like to be hopeful that it would be enforced as widely and broadly as possible, as I am. Could you tell us a little about the franchise for the homeless?

Mr Kidd: We have been able to work out arrangements in the last number of elections, but then it really only comes down to those of us who have made enough noise. We have been able to work out methods and means to allow people we work with to get enfranchised, but first of all that has to be enshrined because everybody is looking for leadership from the various levels of government to ensure that this is a right.

In terms of how that is done, again, this is just like any other service and I understand that. Then the election officers themselves have to understand what the process is, because there still is an amount of education that would have to be done about what it means. I am afraid that just the situation of homeless people is misunderstood. In Metro alone I would guesstimate that there are almost 200,000 who are underhoused who may not ever come up when you file to be a voter. You may be living illegally—

Mrs Y. O'Neill: The enumeration process.

Mr Kidd: The enumeration process may miss 200,000 people in Metro alone.

Mrs Y. O'Neill: I would be surprised if that is not a modest number. More so, I think, in the 1987 election than in the 1990 election, I felt there were many, many people in my riding who did not reach the polls. In fact, on some days there were as many as 60 people standing in line to get put on the voters' list. Now that is in a riding that is quite stable. Mind you, there is a lot of subsidized housing in my riding, but I am thinking that with homeless people, how much greater will be the need to educate and explain rights. It is a great concern to me that the system is so complex for voting.

Mr Kidd: Yes. I just want to bring the other area to your attention, because people mostly think of the dramatic homeless, that is, those who are literally staying on the street. I just want to bring to mind, particularly to those of you who have ridings across the province, that there are the underground homeless who people do not realize are sharing with family or friends and who basically do not have the economic supports. If they did not have the family or friends, they would literally be on the street. They are the ones who are also not in the downtown core of Metro. I know we have been able to reach, not everybody who lives under a bridge, but at least a lot of the people who have been staying in hostels, to acquaint them with

the system. There are means and methods to do that, because a lot of them are reached through municipal social services, in terms of hostels or so forth.

We have been crying for a long time that place of residence can be established in terms of where you receive your mail, because a lot of homeless people still receive mail, unbelievably. Libraries have been doing that for years, if you can bring in a piece of mail with your name and address on it, regardless of whether or not you have ID. That is a whole other issue that we will not get into here. One of the basic problems of all homeless people is that they lose their ID. It is literally capital. Either they lose it because they have no security of their possessions or it is stolen. It is often a difficulty. I just wanted to include the other group because, in terms of the homelessness question, most people only think of the graphic illustrations of downtown Metro and the people who literally sleep outside. They are not aware of the rural homeless or those who are literally sleeping and sharing, and that is a larger number than has ever been calculated.

Mrs Y. O'Neill: Thank you for explaining that to the Ontario public this morning. I am sure you have first-hand knowledge. I think it is an item that all of us in legislative positions and people like yourself have got to continue to take as a very serious responsibility.

1150

Mr White: The issue of homelessness, I think, is interesting. Of course, the right to vote was originally predicated on having a residence. We seem to be following the same practice. It is the residence by which one is enumerated. Rental of residence and total lack of residence, are degrees of poverty and also degrees of enfranchisement in our community, unfortunately. But those basic issues, how to deal with them, it really strikes me, in terms of the issues you are bringing up, that what we are dealing with is, how do we accommodate people who have been traditionally impoverished, disadvantaged, to rules that are set up essentially to augment, to help, to fit the rules of the well-to-do, the powerful, the resourceful. That is one of the main concerns I have with including social and economic rights, and how those are included in a constitution.

I believe the present history with the charter is that people who have used the court system are people in the theoretical sense; they are corporations. They are, basically, those people who can afford to go to the Supreme Court, a very, very expensive endeavour. Very few of the equality-seeking groups, very few of the people such as you represent are able to use that process. You spoke of the bread-and-butter-issues. It makes it difficult for groups like yours and even more difficult for the people you represent to come before committees like this. Even with a social democratic government we have an abundance of lawyers and academics and, unfortunately, not many people representing that vast number of people who are disenfranchised, who are disadvantaged. I think those are the issues I want you to talk to. How do you see that could be included? Personally, I have problems with the court system. I would like to see it somehow on perhaps partly a directive basis or some other mechanism in the court system.

Mr Kidd: It is very appropriate that you refer to the court system, because we are not very encouraged, after last week's decision by the Federal Court—

Mr White: Nor are we.

Mr Kidd: —the cap. I am afraid there is not very much faith in the court system this week from people who are living in poverty. But I also would like to say that, again, we are faced with a current situation and, we believe, a future situation in which we have to use literally all means available. That is why I said that we not only need these rights to be enshrined in the Constitution, but we also need the legislation; and the government has to take the leadership, and the political decisions have to be forthright. I would also like to remind you that most of the appointees to the bench are political decisions as well—that is an aside.

For so many people, a lot of times, the courts have provided some benefits to us and again, with this homeless right to vote, we could work out individual solutions for this community or that community; but without the provincial Legislature taking a position or a court taking a position, it does not help somebody in Windsor and Thunder Bay. Number one is, I think we would still like to see a social charter within the Constitution, even though we want the government and the legislative bodies to take leadership.

The other thing I would like to remind you, and we are being reminded of this every day, those of us who have been given some access to the situation with the current free trade talks with Mexico and in terms of comparing the situation with the EEC: One of the only defences we have against the level playing field where we are not even on the surface, and the future plans that some of the negotiators would like to see, such as the dismantling of UIC and social assistance and everything—is the fight for a social charter between countries so that Mexico, the US and other international communities would have to live up to this type of discussion we are having in this room, on a larger international basis.

It is a defensive posture, but I am afraid we have to be able to use whatever means at our disposal, and so I would use the same logic here. For a poor person in Barrie, we not only have to count on the actions of the Legislative members here and in Barrie, but at times we have to count on the court procedure. We still need that, and I would give the leadership to this body, but we need some of those items identified in the Constitution as basic rights. Because clearly if they are not mentioned there and if they continue to be property rights and white male kinds of rights—I would agree with the previous speaker that a lot of the rights basically are based on the privilege that myself as a white male and others have in this province—that unless they are also written in the Constitution, it is not going to help the political leadership either.

That is our response to that. We want to see some action. The paper will not mean anything unless there is also some action to back it up, and legislation.

Mr Malkowski: I was impressed with your presentation. It is similar to my own experience. I used to be poor and when I would go to the welfare offices they would often tell me, "We need an address from you before we

can give you your cheque." I would have to go and find a place or an apartment and then they would say, "Well, where is your money?" So you are in a catch-22 situation. You cannot get it. When you are talking about social and economic rights, how do you solve that kind of situation? Should you have the right to get a cheque from social assistance without an address, and how do you enshrine that?

Just briefly, if you could talk about that, how would social and economic rights benefit people in that situation?

Mr Kidd: It is a very good question. This question gets asked of us a lot of times, the question of an address, just like your question earlier. We have had to come up with solutions because it is a tough question at times when people are not staying in one particular place in any given period of time. In terms of a place of contact, we have at least tried to establish that as something that should be looked at. In terms of contacting people and in terms of having some kind of communication with people who are poor, we would like to just establish the place of contact.

But in terms of the other things that we are saying, in terms of the rights of the citizens who live within the confines of this community, they are there and I think it is irrelevant, their place of contact, their place of address. We have an incredibly increasing marginalized sector of our economy who are basically not even applying for social assistance programs. The underground economy is growing. You can walk not very far from the Legislature here and see the multiple forms of people who have disengaged from whatever economic system where there is at least some licensing or registries or anything else.

There are people selling all sorts of products, illegal or legal, within two blocks of this Legislature. There are people doing whatever is necessary to survive. And there are basic ways they have to be guaranteed that they will be able to have access to the rights that we consider basic in this country. And that is why I was trying to say earlier, what is often not understood, that the right to vote—the fact that homeless people do not have the right to vote, that always registers. But the fact that someone literally does not have a right to a job, a right to a decent income—you have so many people who, at this present moment, at 23 may never work again—I think that is just as important. There has to be a direct leadership given to make contact and to say something needs to be done on this. I do not think it is just a matter of working out the incidentals of where they hang their hat or where they live. It requires not just to be protected within a Constitution that people have a right and an access to these points, but there has to be some leadership and some programs to go after these issues. There is a glaring issue two blocks from this Legislature.

1200

The Acting Chair: Thank you very much. I appreciate your being with us, Mr Kidd, and for the presentation you have made to this committee. Again, we really appreciate hearing from poverty groups in Ontario because of the concerns that have been raised about the future of our province. The wellbeing of the province is tied not only to the Constitution but to our economic and social and spiritual wellbeing.

Mr Kidd: I would like to thank you again for having us and I also would like to extend an invitation. We often take people on tours of the other side of Ontario. I would like to extend this to members of this committee. If any of you are ever concerned and considerably interested in that, we would be more than happy to take you on a tour of the other side, to give you another side of the life of Ontario.

The Acting Chair: Thank you for the offer.

TRAVEL ARRANGEMENTS

The Acting Chair: I would like to speak to the members now about a number of issues surrounding our travel. As of yesterday, we had a very large obstacle put in our way in terms of one of the groups that is going out to the west. That has meant we have had to rethink totally the trips that are taking place. I just need to share this information with you, especially those who are going to be going on the trips with us.

It has to do with the fact that rather than meeting with the British Columbia committee on Wednesday in Victoria, as we had planned, it has been moved up to Tuesday night in Vancouver. We have to move that along, so we have asked for the group that is going to Whitehorse and to Vancouver to also go to Edmonton, because there were problems in the other group in getting to Edmonton and going through Edmonton a number of times. We have split the committee into two groups and the other group will now go to Winnipeg and to Yellowknife. We have all of these changes, so the tickets that some people have will have to be given back and we will have to issue new tickets. I just needed to indicate that to you.

There is a statement of information that needs to be read into the minutes, just so we are clear about that. The schedule is being rearranged to allow one group to adjourn to Whitehorse, Vancouver and Edmonton, and the other group will adjourn to Yellowknife and Winnipeg, the presupposition being that we will be in two groups, the same committee but two groups, doing the work of the select committee on Ontario in Confederation. I just want to make sure that is clear to the committee at this point.

The other thing is that there are many members here who are leaving today, going back to their ridings, so it is agreed that we will have to pick up our tickets at the airport. I hope that is clear to the members of the committee.

Do you need to say anything, Harold?

Clerk of the Committee: No, thank you, sir.

The Acting Chair: Unless Harold can get them to us sooner, I do not—

Mrs Y. O'Neill: I will be here tomorrow—I am not going home this week—so I certainly would appreciate Mr Brown giving them to me tomorrow.

Mr Harnick: I can make arrangements with Harold if he can get them to my office.

The Acting Chair: Okay. Mrs Mathysen, how are you on this?

Mrs Mathysen: I have obligations back in my riding, so I will have to pick up the tickets at the airport.

Mr Malkowski: Can you send them to my office?

The Acting Chair: Yes, that can be done.

Mr Malkowski: At 77 Bloor Street.

The Acting Chair: Okay, that would be tomorrow then that they would get to you.

Mr Malkowski: I just want to clarify. There is a change in scheduling in terms of places. We have added Calgary. What did you say? Explain that again. It was not clear to me. Could you just run through it again?

The Acting Chair: Let me explain it again. The one group that was going to Victoria and Whitehorse is now going to Whitehorse, Vancouver and Edmonton.

Mr Malkowski: Have we dropped Victoria?

The Acting Chair: We are trying to rearrange to meet the witness in British Columbia in Vancouver.

Mr Malkowski: So Victoria has been dropped then? It is not on the list any more?

The Acting Chair: That is correct, basically because the committee in British Columbia could not meet us on Wednesday. They are meeting with their federal counterparts in Kelowna, BC.

Mr Malkowski: That is fine. It is clear.

The Acting Chair: It has been requested that it would be helpful, if the researcher with the one group that will have a shorter journey could come on to Edmonton and help us in Edmonton in our deliberations there. I just need to get the will of the committee on that.

Mrs Y. O'Neill: Are you suggesting that there will still be a researcher with the Winnipeg-Yellowknife group?

Mr Kaye: The proposal is that the researcher who would be accompanying the members to Yellowknife and Winnipeg would then go on to Edmonton to join me there and be of assistance.

Mrs Y. O'Neill: As you finalize your reporting basically for the week?

Mr Kaye: Yes.

Mrs Y. O'Neill: I have no difficulty.

The Acting Chair: I believe that is all the business the committee has before it. We will now adjourn the committee to Whitehorse and to Yellowknife next week.

Mrs Marland: That is a very exciting adjournment. The committee adjourned at 1207.

CONTENTS

Thursday 22 August 1991

C. E. S. Franks	C-1471
Mary Eberts	C-1475
Ontario Coalition Against Poverty	C-1481
Travel arrangements	C-1485

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

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Select committee on Ontario in Confederation

Comité spécial sur le rôle de l'Ontario au sein de la Confédération



Acting Chair: Dennis Drainville
Clerk: Harold Brown

Président suppléant : Dennis Drainville
Greffier : Harold Brown

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Table of Contents

Table of Contents for proceedings reported in this issue appears at the back, together with a list of committee members and other members taking part.

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Table des matières

La table des matières des séances rapportées dans ce numéro se trouve à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et des autres députés ayant participé.

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au (416) 325-7400.

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

Wednesday 23 October 1991

The committee met at 1536 in room 151.

HOWARD PAWLEY

The Chair: Our order of business is, first of all, to welcome into our midst the former Premier of Manitoba, Howard Pawley. Mr Pawley, I cannot tell you how pleased we are to have you agree to come here and speak to us on your own view of the federal proposals. We hope also that, because of your involvement historically with the Meech Lake accord, you could also hearken back to some of those negotiations and perhaps give us some perspective about what we have set before us in terms of the federal proposal. That would be very helpful as well.

Hon Mr Pawley: Thank you very much, Mr Chairman. Probably I could commence by making some remarks about what I see to be the climate, positive and/or negative, at this point in time in particular relationship to the climate leading up to the debate on these proposals, in contrast to the situation during Meech. I could outline some of the difficulties that I think led to the Meech so-called fiasco. Then I would like to make some comments about the present proposals, and hopefully we will have lots of opportunity for some questions.

The past 20 years have been very painful for us in Canada: the Victoria formula debacle of 1971; the 1981-82 situation in which Quebec was isolated in the constitutional discussions which gave way to the need to bring Quebec into the Constitution; the 1986 meeting in Edmonton in which all premiers agreed to attempt to bring Quebec back into the Constitution and to make Quebec the one principal area of objective on constitutional reform; 1987, of course, the meetings at Meech and at Langevin; the final document that was put together at the late meeting, an 18-hour stretch, at Langevin, and last year the collapse of Meech Lake.

First and foremost, and I will deal with this very briefly because you have probably gone over much of this before, Meech in my view died because with the approach that was taken, that of a seamless web, one thread removed would bring apart the entire document. It was an approach that was not well thought through and that caused a great of resistance. There was an impression that 11 men behind closed doors had put this together and had blocked any further discussion about improvement or reform of the document. That was certainly the perception; it was quite clear.

Another problem which arose was the fact that there was ignoring of other stakeholders in Canadian Confederation. In 1982, with the patriation of the Constitution, aboriginals, multicultural communities and women were all stakeholders in the Constitution, the Charter of Rights and Freedoms. We had not just governments now with an interest in the development and the changes in the Consti-

tution, but other stakeholders. They were excluded during the Meech Lake process, and we found out to our dismay what the end result of that was.

At the same time, if I could just put on my hat as a professor in political science for a moment, we had an increase in what Don Smiley would have referred to as the three axes, the ascendancy in those three axes in Canada: the English-French relationship; the relationship between central Canada and the peripheries of Canada, both western Canada and Atlantic Canada; and the relationship between Canada and the United States. There was an increase in the ascendancy, an increase in tension in respect to all three areas between 1987 and 1990, and that compounded the atmosphere.

We have, I think, a number of problems now in attempting to pick up the proposals that are before us. One is that the atmosphere is much more sour in the country as a whole than it was in 1987. The federal-provincial relationship, as a consequence, is much more strained between the federal government and the provinces. It is going to be extremely difficult to overcome that hurdle.

I think there is much more dissatisfaction with the political parties, with governments federal and provincial, and it will be your responsibility to evaluate why in the political process this should be. The results of the last week should indicate that in both British Columbia and Saskatchewan.

It is not a good time to be in government. It is a good time to be out of it, and maybe out of politics too—I say that as one who was in politics for 19 years—with the mood that exists out there among the public, probably all as a consequence of the extreme dissatisfaction with the economy and uncertainty as to the direction in which Canada is proceeding.

Having said that, the opportunities that exist now with the proposals before us involve a more open process, commitments which I accept at their face value that this will be an open process as opposed to a closed process, that the proposals are not a seamless web but ones upon which we can make improvements and changes.

I also think the greater sense of urgency is a positive. I can remember that in 1987-88, if you suggested for a moment to anyone that the unity of Canada was at stake, nobody believed you. The public as a whole was certainly not sympathetic to that kind of rationale being advanced in 1987-88. I think most Canadians now realize that the unity question is very paramount, very much of a consideration. Maybe sometimes we have to move closer to the edge before we recognize the fact that we must attempt to bring about a resolution of the crisis.

Having said that, let me review with you some of my thoughts in regard to the proposals that are before us at the present time. I want to commence from the premise that

this is a time in which compromise and consensus must be uppermost in our minds, such as are required in a diverse nation like Canada: Western Canada, Ontario, Quebec, Atlantic Canada and the Territories. It is a tough country to govern and in which to find consensus. In order to do that, everyone is going to have to compromise to some extent in the process.

First and foremost, in regard to the distinct society, I think this again will be one of the most difficult areas to deal with. It has been a recognition that I have never had difficulty in making. Quebec is clearly unique, clearly different. We must be prepared to accept that in Canada if we are to ensure that we bring this nation together in one of mutual understanding. There is a need therefore for generosity. I think the proposals we have before us are more defined than those in Meech. This may help to some extent. The Meech proposals were too open-ended in so far as the definition was concerned. Here we are dealing with language, the civil law and culture.

Having said that, I want to advise the committee that I have no doubt this will remain a contentious area in Canada. Recent polls indicate that 55% of Canadians are opposed to and 45% are in favour of this provision, outside of Quebec.

Let me tell you, western Canada—I have wounds from Meech Lake, and I do not believe positions have necessarily softened in many areas in respect to this particular provision of a distinct society. It is one that I sense probably will not be capable of much change in this document if we are going to resolve the present impasse, and while we have some reservations in respect to this provision, I believe we must run with the provision basically as outlined.

Having said that, I believe there is a major weakness in the proposals and one that if it is not corrected is going to result in the collapse of these proposals. I cannot see your own province of Ontario accepting these proposals. I certainly cannot see British Columbia, Saskatchewan and Manitoba accepting these proposals unless changes are made in respect to the provision dealing with aboriginal self-government.

Aboriginals, having inhabited this country for at least 10,000 years, having had their own governing nations before the arrival of the white man, clearly have an inherent right to self-government. They do not understand this talk in the proposals and by the minister that they must negotiate self-government. What they want, and why I think there will be no buying into this, is a recognition of their inherent right to self-government.

They certainly cannot for a moment accept that the distinctness of Quebec can be recognized immediately, the sexual equality of women having been recognized in 1982 at once, and yet the recognition of their right to self-government is being deferred for an additional 10 years. There is no way that will be sold to the aboriginal people, and I believe many governments in Canada will not find it feasible to accept these proposals unless there is a basic change in the proposals regarding the aboriginal people.

One of the main failings in the Meech process was that from 1982 to 1987 we attended four very difficult constitutional meetings, the Prime Minister and all 10 premiers, on

aboriginal self-government. All those meetings failed, and the last meeting failed but a few weeks before April 1987. The anger arose because the aboriginals had been involved in an open process for five years, a process which had led nowhere, and yet in their minds 11 white men had been able in the process of a few hours to deal with the Quebec issue. Those same 11 men around the table, through four conferences over five years, had been unable to come to an agreement in the aboriginal areas.

1550

We said that is not going to be easy. There are going to be difficult problems to undertake, because the aboriginal people themselves have differences of point of view. We have seen the Metis people in western Canada already give their support to these proposals. On the other hand, the Inuit and the first nations have expressed their firm opposition to the proposals as written. It will not be easy; it will be very difficult. But unless we are prepared to spend time and to deal with this—and I would urge the Ontario government and the Premier in his discussions to take a very firm position on the aboriginal area—I do not think the package will be sold.

Another area I would like to deal with is the spending power provisions in the proposals. During the discussions on Meech Lake, both at the lake itself and at Langevin, then-Premier Peterson and I were both concerned about the weakness of the spending power provisions and the potential impact the spending power provisions would have upon weakening the ability of the federal government to advance national cost-shared programs in areas of provincial jurisdiction. In fact, one of the major reasons for the difficulty at Langevin was our efforts to tighten up those proposals. There was a tightening up of those proposals at Langevin from the original proposals that were made. I would refer you, if you have the opportunity, to David Milne's book on the Canadian Constitution, in which he deals with some of the discussions that went on, at page 201.

In my view, if the Clark proposals had been in effect at the time of medicare, medicare would not have been possible. They are too negatively framed and the decisions in respect to cost-shared programs in my view should be removed from the council, as is proposed in the Clark proposals. That should be restored to the federal government. It should be the federal government that establishes the national standards—I prefer national standards. We did not get that with Meech Lake. We may have to agree with the same wording as Meech Lake, but I would be extremely leery of accepting any weaker wording than that which was obtained in the Meech Lake discussions in 1987. In my view, the Clark proposals weaken substantially the wording even from Meech Lake, which in many ways was unsatisfactory to many Canadians at that time.

I do not think it is possible to obtain a national day care program in the future. Even if the moneys were available during the next decade or the next few years for a national day care program, I would hazard that this would be impossible under the Clark proposals.

I must acknowledge to you, so I am clear as to my position, I would prefer the abolition of the Senate. I prefer

a House of Commons with proportional representation. Having said that, I think an elected Senate is preferable to an appointed Senate. However, I would prefer to see it framed in terms of a House of the Provinces. The election of the members to that House of the Provinces in my view should take place at the same time as provincial elections, not at the same time as federal elections. I suggest that such a House of the Provinces should be dealing with questions of regional disparity and federal-provincial relations. It ought to have a role as far as the enforcement of section 36 of the Constitution, which deals with matters of regional economic development and equalization, is concerned.

If the elections take place as proposed, then the second chamber, whether it is called a Senate or House of the Provinces, will mainly reflect the federal government and its policies at any given time, when the second chamber's only useful role in my view would be to reflect federal-provincial areas of concern.

Some of you remember the CF-18 fiasco in Manitoba. The award was made improperly, in my humble view, to Canadair in Montreal, contrary to merit, contrary to price. I do not believe that a triple E Senate would have helped us one bit at that time, because the members of the triple E Senate from other provinces would have rallied behind the federal government if they were indeed of the same political stripe.

At that time Manitoba, with a New Democratic Party government, the Conservative government of Alberta and the Premier of Saskatchewan, Premier Devine, spoke out very forcibly in support of the federal government, thus explaining my reason for being somewhat sensitive to any suggestion that the member should be elected coterminous with federal election, because I would think we will just get a rubber stamp for federal government decisions and not really a voice that will reflect the concerns of the provinces or the regions at any given time.

I have concerns about the special allocation for aboriginal members in the Senate. I would like to hear from aboriginal organizations. I think there is some disagreement. I fear ghettoizing aboriginal representatives to the extent that they would be off there in a corner. Their opportunity to influence, to lobby members of Parliament, to have a larger impact I think would be reduced rather than enhanced. It is a matter for discussion. I offer you my particular view in respect to that.

I am worried about the remarks by the minister that if this particular structure had been in place, then neither the national energy policy nor the goods and services tax would have been passed. It is not that I have any liking for the goods and services tax, but I think a federal government must govern. We were told that the goods and services tax was for the wellbeing of Canadians as a whole and that it was necessary in order to implement measures that would improve the economy, the fiscal position of the federal government.

I am concerned about any group that is not elected by population, contrary to our parliamentary traditions, having effective power to block major policy decisions. I do not think that is what democracy is all about. Whether we

agree or disagree with the GST or the national energy policy, surely the government of the day has a responsibility to govern and not be blocked in this decision-making by another group, whether it is a triple E Senate or an appointed Senate.

The property rights provision will obviously have to come out. I do not see any way this particular provision can survive. I have had three experiences, without talking about environment or health and safety, in which property rights would have been potentially used successfully against the implementation of legislation in Manitoba from 1969 to 1988, because we were threatened each time with court action on the basis of property rights.

One was the implementation of public automobile insurance in Manitoba in 1970. The Manitoba bar association examined whether or not it could block the implementation of the legislation on the basis of property rights. Because it was not enshrined in the legislation, they backed off.

Another one was the marital property legislation in 1976. Some professional organizations threatened to challenge the equal division of property rights on the basis that this would impinge upon one's right to own property. Again, I think if that had been enshrined, marital property legislation would have been prevented from being enacted.

1600

The last example is farm lands ownership legislation. This is a particular concern to Premier Ghiz in Prince Edward Island, but both Saskatchewan and Manitoba have had farm lands protection legislation dealing with ownership by non-full-time farmers of acreages in excess of a certain number of acres, one section. That legislation would have been blocked.

It is not a question of whether you agree or disagree with that legislation but whether it should be constitutionalized so that governments are prevented in the future from the public policy process of making those kinds of decisions. I suggest not. Property rights in my view should not be left in the document. I frankly do not think there is much chance that they will survive the upcoming discussions.

I have raised some questions about economic union with you. Some of this is very preliminary and I raise the questions more so you can look at some of these areas in the future.

First I want to say that we from Manitoba, along with Ontario, were always very supportive of removing inter-provincial trade barriers. It was interesting during the free trade discussions that the most pro free trade provinces, Quebec, Newfoundland and British Columbia, resisted the efforts by Premier Peterson and myself to bring about agreement on the removal of interprovincial trade barriers. Having said that, I think it is important to look at some areas that should be considered and I leave them here for your thought.

A province which is receiving equalization payments, in attempting to reach a stage of economic self-sufficiency so it no longer needs to draw upon equalization, whether it is Atlantic Canada, Manitoba or now Saskatchewan, when it advances on a major work—in the case of Manitoba Hydro, where we spent some \$2 billion on hydro development, we

borrowed the money, there were no tax concessions, no grants from anybody involved to do this for the economic development of the province in order to escape the perpetual payment of equalization from Ottawa. The question is whether we should be able to give first preference to employment to Manitobans, or it could be Newfoundlanders, in that kind of situation.

There are some possibilities of interpretation under regional economic development that it could be done under the proposals. I do not think the Manitoba instance would have been possible under that. You may not think it should be possible. I do not want to engage necessarily in a long argument with you at this point, except that it was a vast undertaking by a province that was supposedly a have-not, a recipient of equalization. Should we be given all the tools in order to develop our own economic wellbeing to escape equalization?

I have concerns about the proposals which deal with the council exercising fiscal control as far as provincial decision-making is concerned. First, I worry about a majority of provinces ganging up against one or two provinces that may pursue a different fiscal direction. I think in a federal system that ought to be permitted. We are not a unitary state; we are a federal system because of the diversity of this country. This is clearly geared to preventing a province from getting out of step with fiscal measures that are undertaken by the federal government and the majority of provinces. Whether or not we agree on the Ontario budget, I can tell you that this measure potentially would have been used in the case of Ontario and it would have been used in Manitoba in 1982-83 during the recession when we advanced our jobs fund thrust in that province.

I want to leave this thought with you, whether or not it is appropriate to do that at the same time we leave monetary policy in the hands of the Bank of Canada as per these proposals, and also constitutionalize within these proposals that the responsibility of the Bank of Canada will be for price stability. There is no reference to employment; it is strictly price stability.

I happen to think that fiscal and monetary policy have to operate together. I can remember the 1982 conference of the first minister of Canada and the provincial premiers, when we all objected, every premier—this has been the case for the last 10 years—to the policy of high interest rates and a high dollar being pursued by the Bank of Canada. At the conference Governor Bouey acknowledged to us, as did the ministers at that time, that there was no consideration of a monetary policy being complemented by a fiscal policy.

The trouble with the monetary policy that has been pursued is that it does not reflect the diversity of Canada, the fact that in many parts of Canada, particularly Atlantic Canada, inflation is not the problem; unemployment is the problem. The higher we keep interest rates on the dollar, the more difficult it is to sell fish and forestry products. We have to have a fiscal policy that will complement a monetary policy.

I am concerned when we enshrine in the Constitution price stability as being the Bank of Canada policy. Whether that is right or wrong policy is really beside the

point. Should it be enshrined in the Constitution while at the same time we take away from provinces—if a province opts out, it will come clear after three years whether that province continues to opt out—the right to do their own innovative and creative fiscal policy initiatives, which may be Keynesian or neo-Conservative depending upon what government happens to be in power at the federal level in the future?

It is not a question of neo-Conservatives against Keynesians. I suspect that by the end of this decade it will be a more Keynesian economic direction and probably some provinces that will want to pursue a neo-Conservative approach will be prevented from doing so because of constitutionalizing this. Let's not constitutionalize this. Let people make these kinds of decisions given the circumstances at the time and not attempt to tie future generations to a particular philosophy or direction.

Also, I think that provision has only inflamed a lot of resistance in Quebec. It has certainly stimulated a great deal of nationalist and sovereignty feeling in Quebec. I suggest the whole economic union provision should come out. If it does not come out, I think it is mandatory that the social charter be included. I do not see how we can have this provision without the social charter. If we are going to run with the economic provision, the social charter must be included.

Discussing the social charter more specifically, the area in the Constitution now dealing with regional economic development and equalization should be strengthened. I do not think we can have a truly united country as long as we have have and have-not services and varying rates of taxes, where people in Newfoundland, Nova Scotia and New Brunswick pay exorbitant sales tax and income tax beyond their ability to pay at the same time their services are inferior because there is no effective way to enforce section 36 of the Constitution.

In fact, at the last premiers' conference I attended, in Saint John, New Brunswick, in September 1987, it was agreed that we would ask that section 36 be included for future constitutional consideration, with the objective of strengthening it in order to ensure that there would be comparable social services and tax rates all across Canada, from one end of this country to the other. I think that is a must if we are going to proceed with future progress.

1610

Whether or not the social charter will be sold in western Canada will depend a great deal on how it would be monitored and enforced. If the courts are to play a major role, I do not think it is going to fly. Let me tell you that westerners from all sides of the political stripe, whether it is a Roy Romanow, a Sterling Lyon, a Howard Pawley or an Allan Blakeney, are very reluctant to get the courts involved. There was even some uneasiness—I did not particularly share this—on the charter in 1981-82.

If we are going to have a second chamber, I suggest it be a body to monitor and enforce the provisions of the social charter and minimize or eliminate any need for the courts to be involved at all. I think to transfer power to undertake policy from elected representatives to judges and courts is the wrong direction to proceed in. I do not

think it will sell as far as other provinces are concerned. If you leave it to another elected body to do the monitoring and enforcing, it may very well be sold.

I disagree with the proposals that would transfer the residual powers entirely to the provinces. I think that leads to a great deal of difficulty as far as the environment is concerned, which would end up, under my interpretation, as exclusively a provincial area of responsibility. It would be better to leave the development of the residual power in the future to the political process and the courts, as proposed by the Group of 22, preferably by the political process, rather than to transfer residual powers to the provinces.

I do not believe housing should be exclusively a provincial responsibility. I think many small provinces would be unable to embark upon a major housing thrust if, as proposed, housing should be transferred to the federal government.

I should probably terminate at this point and deal with any questions that might exist.

The Chair: Thank you, Mr Pawley, for those remarks. They have been very comprehensive and have dealt with many of the aspects and certainly have raised questions presently.

Mr Bisson: Actually you answered part of my question in the last part of the comments you made. I want to get back to when you were talking about an elected Senate. You are advocating a position of putting in place something that would be called the House of the Provinces. I do not know if I misunderstood, but I got some contradiction, unless I was not paying proper attention. On the one hand you are saying you oppose a triple E Senate because you feel it would obstruct the ability of the federal government to pass laws within its own jurisdiction, but if I understand you correctly when you are talking about a House of the Provinces, you are talking about a body something like the Senate we have today, a House of sober second thought but with no powers.

Hon Mr Pawley: When it comes to laws I would not recommend that the approval be obtained first from that second chamber. I think a suspensive veto of six months is adequate. I would want to grant it the additional power of dealing with the double majority necessary in culture and language as proposed but, as I mentioned, monitoring and enforcing section 36 should be a responsibility of that second chamber. I think all issues pertaining to the social charter should be its responsibility.

I would not leave the question of the spending power with either the council or the second chamber. I think that should be a federal government responsibility. All matters pertaining to federal-provincial relations should be monitored and, if necessary, enforced, including agreements such as the Canada assistance plan and the established programs financing, which should be enforced by that second chamber rather than the Supreme Court of Canada or other adjudicative bodies.

Mr Curling: It is always a pleasure to hear you. I had the opportunity to hear you at a first ministers' conference. I hesitate even to question some of the statements you

have made, because you are such an expert on many of the issues, but I want one clarification on one aspect and also to clarify what I perceive to be a contradiction in another way.

First was the distinct society. You stated that you were making a comparison of how they came about recognizing Quebec—11 men in a room for a couple of hours recognizing Quebec as a distinct society—and wanting to give the aboriginal people 10 years in order to have their self-government. I thought the distinct society debate had been going on since about 1867 by different names or in different ways. Therefore, it is something they have been wrestling with for over 100 years now. Is that not so?

The other part I found had some contradiction was when you spoke about fiscal control. You spoke about how you are in disagreement with it but it should be enshrined in the Constitution. That is what I got.

Hon Mr Pawley: I am against enshrining that in the Constitution.

Mr Curling: That is right, but you want the social charter enshrined in the Constitution. One minute you state that the fiscal policy would restrict a province to express itself in the way it wanted to go, because of its different economic ideology, and then you say the social charter should be enshrined. In the same way that it is political ideology that actually drives each government, whether it is a social democratic government or Conservative government, if it is enshrined in the Constitution, you went on to say, you would not like the court interpreting this, that it should be outside of the courts. I lose you in there somehow. Could you just explain it for me a bit more?

Hon Mr Pawley: On the first question, dealing with the aboriginals and the distinct society, I think I indicated to you that the perception by the aboriginals was that they had tried from 1982 to 1987 to obtain recognition by the first ministers. We went through four conferences that were unsuccessful. Then they saw us getting together and resolving the issue of Quebec within a few hours at Meech Lake, and the perception from their perspective is that we were able to resolve it quickly, behind closed doors. Yet as far as they were concerned, they had played by the rules and the open process through four national conferences and had been unsuccessful.

I agree with you that the reality has been that there has been a history—in fact predating 1867—as far as Quebec is concerned. There has been a long process there. In my view, all we are doing is recognizing that which the Supreme Court has already said, and also the Quebec Act of 1774.

You have asked a good question about the charter. I think the social charter must be included if we are going to run with this economic charter. That was one position I think I enunciated quite clearly. I do not see how the economic union proposal could remain and not be balanced out in the overall considerations by a social charter.

If we are going to end up getting into great preciseness, as far as the social charter is concerned, then I would agree with you. As I understand the objective, it would be some general kind of approach with regard to certain minimum

health and welfare standards across the country. Many countries enshrine those general kinds of concepts. We have many concepts like that now enshrined in our Constitution. I think that is quite different than saying that the only responsibility of the Bank of Canada is going to be price stability.

To me that is very precise, very specific and a position, by the way, that has been disagreed with by each and every Premier, regardless of political stripe, from Peter Lougheed to René Lévesque and David Peterson. Every Premier I can think of in the last 10 years has disagreed with that specific kind of policy thrust by the Bank of Canada. Why would we enshrine that? I think we all agree, regardless of political stripe, that there should be some minimum commitment to housing, to universal health protection, to a universal education standard. I do not think there is a disagreement there, philosophically.

If we are going to get into very precise wording, I would have difficulty with the proposal. As I indicated to you, I also have difficulty if we are going to enforce the social charter by the courts rather than the second chamber. That is basically my response to you.

1620

Mr Eves: I would like to address the issue of the Charter of Rights and Freedoms and the issue of the override or "notwithstanding" clause, section 33. I wondered where you stood on its inclusion in 1982 and what you have to say about the proposal the federal government is now putting forth as part of its document about the 60% majority of the appropriate legislative body with respect to an override.

Hon Mr Pawley: Probably in 1981-82 I was against its inclusion. I had not thought out my position. I would have to tell you I am in favour of it now.

Mr Eves: Can I ask why you have changed your mind?

Hon Mr Pawley: Because, as I have indicated in regard to the role of the courts, I think it is important that in the final analysis elected representatives assume responsibility. I never quarrelled with the right of Premier Bourassa, for instance, to utilize section 33 to override Bill 101. We gave him that right. I think it was through the front door. It has a five-year time limitation. In his view, it is in the public interest in Quebec and part of the public process. Although it has been used rarely, I believe the "notwithstanding" clause provision should remain.

I have hesitancy in seeing the percentage increase from 50% to 60% of the members of the Legislature. I think in that case a government might be impeded from using it. I know the popular thought is to throw out the "notwithstanding" clause provision altogether. I think it does run contrary to the whole concept of accountability.

Ms Harrington: I really appreciate your coming. A few days ago, in fact Monday night, very many members of our caucus had a meeting with the Minister of Culture and Communications and we were actually discussing what in effect is culture, and that was quite interesting. We got to the question of whether or not culture should be a federal mandate—you mentioned you feel housing should

remain at the federal level—and one of the suggestions was that the federal people seemed to want to get out of culture. I am wondering how you feel about that.

Hon Mr Pawley: Certainly, as far as Quebec is concerned, I think Quebec ought to have control over culture. I think that is one of the compromises we must be prepared to make as Canadians to maintain unity in this country.

On overall responsibility for culture, I think the federal government should remain responsible. I do not think there would be much of a cultural policy in a lot of the poorer, smaller provinces unless there is a federal responsibility for overall direction. If we are going to pull this country together, I think there is a responsibility on the part of the federal government to be responsible for culture. Culture surely is part of the Canadian fabric that keeps the country closely drawn together. So I am opposed to any provincializing of culture, outside Quebec. I think it is best as it is now, a federal-provincial shared responsibility.

Ms Harrington: Would it be similar then to your view of how housing could work?

Hon Mr Pawley: Yes, clearly. If I can again draw upon my own experience, I do not know how we could ever have undertaken the housing initiatives we took in Manitoba during the 1970s if it was not for the CMHC. Even more extreme havoc would have been created for Atlantic Canada if there had been no CMHC. Housing should, in my view, definitely remain a shared responsibility.

Mrs Y. O'Neill: Thank you, Mr Pawley, for coming to speak to us. You said very little when you got to your points on the interprovincial trade barriers. Could you say a little bit more? You just mentioned those provinces that were very protective, and I would like you to say a little bit more about what you think the possibilities are in this area.

It certainly is something the Ontario government has looked at no matter which party has been in power, and I wonder how long we are going to look without doing something. I feel there is much more at stake here. It sounds quite easy at first blush, but then it gets much more complicated when we start to talk about it.

Hon Mr Pawley: It can be very difficult. I can understand, for instance, Newfoundland's reluctance in 1987. They were fearful it would interfere with their own regional economic development thrust. It is a different story out in BC.

I think there has been progress since 1987. It is my understanding that among the premiers there has been a shift towards more united support for the removal of interprovincial trade barriers, with the possible exception of Quebec. I am not quite sure of the latest Quebec position, because Premier Bourassa is not attending premiers' meetings.

I think it is necessary that capital services and goods all move freely in this country, subject to some of the caveats I mentioned. I think it important that regional economic development policies directed towards moving have-not provinces away from equalization-receiving provinces to self-sufficiency should be encouraged. That is my principal caveat to removing the barriers totally. I think the

mood has been positive and has been towards removal of barriers. I am not quite sure of Quebec's present position.

Mrs Y. O'Neill: There is the possibility definitely in this round that there would be an acceleration.

Hon Mr Pawley: I think there is a good likelihood of this.

Mrs Y. O'Neill: Likely the things that are happening in the Maritimes themselves would be helpful.

Hon Mr Pawley: If I can project ahead, I am not quite sure what a change in Quebec government might do. I think a more nationalist government would have great difficulty in accepting any removal of trade barriers. That was the case in the early 1980s and I sense it would not have changed.

Mr Harnick: When you were talking about the social charter, I was interested in your reference to a government commitment. It is an interesting turn of phrase. Is it a commitment to a concept or is it a commitment to a policy? I think those two things are very different.

When we talk about a social charter, are we committing governments to a policy of providing certain basic minimum things? Or are we committing them only to a concept, so that we are not raising the expectations of the public that everybody is going to have a job and a minimum income and a house? As I see the social charter, that is one of the misleading aspects about it. I wonder if you could elaborate on whether you are talking about a commitment to a concept or a commitment to a defined policy.

Hon Mr Pawley: I indicated that I felt it should be a commitment towards a minimum level of service. In my view, it is going to depend a great deal on whether or not the economic union provisions are left there. Frankly I would want more precision if we are going to leave the economic union provisions in than if we were going to take them out. So my answer would depend a great deal on whether economic union provisions are left in or removed.

1630

Section 36, which deals with the limited social charter now in the Constitution, speaks to some of the problems. In 1982, it was represented to Atlantic Canada particularly that this would ensure there would not be two classes of citizens in Canada. If Joe Ghiz were here, he would go on for hours about how this has been pure lipservice in the Constitution.

I think Section 36 has to be clearly understood, which we are attempting to do. The impression was left in 1982-83 that the limited social charter in there was going to be more far-reaching than indeed it was. There is a case now in the courts, launched by the Atlantic provincial governments, to have a more clear definition as to exactly what was intended by section 36. We should avoid that. If the economic charter is going to be part of this document, then I think we need more precision. If the economic charter is removed, then I think some general concepts, some general minimum thrust, is sufficient, but making it very clear what the intention is, which was not done with section 36.

The Chair: Our last questioner is Mr Winner.

Mr Winner: You indicated near the end of your presentation that you had some reservations about transferring residual powers to the provinces. You cited the environment as an example and said that if the environment were placed exclusively in the hands of the provinces, it might perhaps weaken our national initiatives. I seem to recall that in the United States residual powers are enjoyed by each individual state, yet counterbalanced against that are strong national institutions like the federal environmental agency. Do you see any possibility for that model?

Hon Mr Pawley: That is possible. What I would be more fearful of at the present time is that we would end up accepting the proposal as is, without having those strong national central institutions. Because of the existing political climate, the tendency would be not to go in that direction. So I would have concern that the proposal as worded here would be accepted without the example you have given us.

I again mention the somewhat parochial matter of the Rafferty-Alameda dam project. This impacts upon Manitoba and yet the Manitoba government, both the previous and the present government, though gravely concerned about the negative aspects of this dam, have been pretty well powerless, even with the federal government's involvement in it. I would thus worry if the provinces had exclusive rights in environmental matters. I do not think you could define this as coming under emergency legislation. I believe the federal government retains national emergencies as a residual power, and I do not think the Rafferty-Alameda project comes under that.

We had concern about Ontario. We used to have a running battle over a lake right next to the Manitoba border, where mining was going to impact upon the city of Winnipeg's drinking water supply. We felt powerless because there did not seem to be a federal responsibility to deal with that kind of interprovincial situation.

The Chair: Mr Pawley, I want to thank you very much on behalf of the select committee for coming and spending time and helping us to grapple with these very important issues regarding the federal proposals.

Hon Mr Pawley: Thank you very much, Mr Chairman.

IAN SCOTT

The Chair: I now call on our next witness, Mr Ian Scott. I want to say that it is a privilege and a pleasure to have Mr Scott with us today. He is a member of the House here in Ontario—I am saying this really for the benefit of those who are watching today on television—who has had a distinguished career working on constitutional issues. I thank you very much, Mr Scott, for giving us an opportunity to hear you and to question you.

Mr Scott: Mr Chairman, I will be as brief as I can, and I will not duplicate what Mr Pawley said. You are seeing the walking wounded today when you see Mr Pawley and me, and one of the things I want to do is, I hope, help the committee by focusing on the task you have and making a couple of suggestions about how, as a result of my experience, unsuccessful as it was, the exercise might be improved.

I want to begin by saying that when I came to politics in 1985, the first event was election night, and I remember it with enormous satisfaction. I somehow got the sense that every night thereafter would be rather like election night and I would be hoisted on the shoulders of my constituents and praised for what I had done.

I found, as many leaders have said, that to govern is to choose. In fact, my experience of five years in the government was perhaps like the experience that government members are now getting, that all of my colleagues, with the exception of Mr Harnick, know personally, which is that you are obliged, in the act of choosing, to inevitably make choices that are made from a menu much more limited than you expected and much less attractive than you expected.

I am sure that all government members are getting the experience that we had, finding they are not able to do the things they wanted to do or are not able to do them in the way they wanted to do them, or they are attracting by the act of choices criticisms and attacks which they understand—because we are all in politics—but which they may from time to time think unfair.

If that is true in matters of domestic politics, it is particularly true in matters surrounding the making of constitutions. It seems to me inevitable that in the act of making constitutions, politicians who are in the exercise are going to suffer in political terms. We better just face it.

Mr Pawley, who was just here, suffered. Allan Blakeney in 1982 was defeated in the greatest rout in the history of Saskatchewan, and said it was largely because of the constitutional positions, I think right, which he had adopted. The exercise of making constitutions is not going to make you popular, no matter how many times you go around the province of Ontario. It is inevitably going to make you unpopular in this decade.

The good news is that your memory will be revered, if you succeed, by your children and grandchildren, and your reward for successful Constitution-making will not occur in this generation, as it did not in the case of Macdonald and Cartier or any of the others, but in the next generation, because you will have preserved the country to which we are all so dedicated.

This committee, and I admire you enormously for it, has been going around the province hearing what people, if they had their druthers, would like to have in the Constitution of Canada, or hearing what they have to say, some of it negative, about what other Canadians would like to have in the Constitution. It would be nice if you could go on doing that for ever, but inevitably you cannot. To govern is to choose, and some choices have to be made.

The governing party is the main actor in this. Opposition parties have a role by way of making suggestions, but if the government chooses and makes reasonable choices in Constitution decision-making, I believe our role and our obligation is to be non-partisan about it, in so far as we can, and support the government of our province when those choices are made.

1640

I say all that because I think sometimes it is overlooked and because I really want to make four points to you. The

first is that the timetable is incredibly urgent. The National Assembly of Quebec, as you know, is in the course of passing a bill which will require by law a referendum to be held by the autumn of 1992, and although there is some dispute about this, that referendum, in my opinion having looked at the statute, must be a referendum about sovereignty or independence. It may be a referendum about other things as well, such as existing proposals, but it has to be a referendum about sovereignty or about independence at the least.

That is scarcely one year away. Even if the Premier of Quebec could avoid that referendum, he would be forced the following year to have a general election, and if he avoided the referendum and had the general election, the general election would be the referendum. Whether the referendum is held in the autumn of 1992 or it is not and an election follows the succeeding year, there can be no guarantee that the referendum will reject independence. Indeed, I think the best analysts in Quebec regard the matter as almost a tie at the present time, and if economic circumstances get worse, the situation may even deteriorate.

The reason I emphasize this is that, while we have been going around hearing people in our various provinces, the clock has been ticking, and when October of 1992 comes, the game may in a functional sense be practically over. We are very close to 10 minutes to midnight.

If you look at when Meech Lake was proposed, another interesting constitutional thing happened in the world: the wall came down in Berlin. Since that time, the two German republics have drafted their proposals, drafted a constitution, enacted the constitution, ratified the constitution and unified their country, a thing that we would have thought a decade ago could not possibly occur in our generation.

All we have done so far is have the federal government present a series of proposals which may, five months from now, become the proposals of who? The proposals of the Conservative Party. We are not approaching this issue with the dispatch it requires, and if we do not begin in the provinces to make some tough, aggressive decisions, many of which will hurt, the timetable may elude us.

The second point I want to make is about the amending formula. The conventional wisdom, and I do not disagree with it, about the failure of the Meech Lake process was that it was 11 old men in a dark room disposing of the nation's fate. Everybody agreed that a new process would have to be developed, and I have no trouble with that. I think a hearing process such as you are conducting is very useful, but let us understand that the new Constitution we are going to make has to be made on the basis of the 1982 amending formula. There is no other amending formula.

The trouble with that amending formula is it requires either seven or 10 legislatures and the Parliament of Canada to introduce identical resolutions in their legislatures and Parliament for approval which must all be introduced and passed within a three-year period.

That was what led Mr Mulroney to talk, perhaps unwisely, about the seamless web. He recognized that if every Legislature made a change, there would not be in the time frame sufficient time to get the whole exercise going,

because there was not an amendment feedback loop that would move an amendment proposed in Manitoba or British Columbia or Nova Scotia or Newfoundland into the Ontario Legislature automatically. But that is the formula with which we are going to have to work.

What that will mean is that at some stage, sooner or later, the seven premiers—or 10, if the veto has to be dealt with, and the Prime Minister—who are prepared to initiate such legislation in their legislatures are going to have to agree on the terms of that legislation.

I have grave doubt about whether that can be done in a public forum, but if you want to do it in a public forum, by all means try. I think it will be very difficult for our Premier or any other to face the fact that some of his proposals inevitably are going to be abandoned or watered down in a public forum. That is just human nature. That is not the despicable nature of politicians. Any agreement and any consensus, whether it is a matrimonial agreement or whatever it is, ultimately has to have a private stage so that people can make accommodations without looking foolish or unprincipled.

You may not like that, but that is the law of life and we may as well face up to it. Sooner or later our government in Ontario in combination with the other governments in Canada is going to have to agree on resolutions identical in form that will be introduced and passed within a three-year period. I simply draw that to your attention—that is not something I like; it is something the Constitution requires—to remind you that while we want to have as open a process as we can in this initial stage, at a certain stage there is going to have to be agreement. The phrase “seamless web” will never and should never be used, but there will have to be an identity of purpose in support of identical resolutions if the three-year time frame is to be possible.

The third thing, and really the last substantial thing I want to refer to if I can heighten the sense of urgency, is the importance of a sense of a compromise. I understand those people from whom you hear, including the former Premier of Manitoba, saying they would like this and they would like that and they would like the other thing or they do not like this and they do not like that. It is very important to get a sense of what people think, but the real question for most of us in Canada is, what are the things on our shopping list that we will give up?

I want to tell you, if you are going to seek compromise among 10 provinces and a federal government, you are talking about your second or third choices as a practical matter and not your first choices. I am not saying you should not put your first choices forward; of course you should. The essence of compromise is surrendering something. As you have heard today, and I am sure you have heard it a hundred times, if we are to make an accommodation with Quebec and with the western provinces, we are going to have to take our second and third choices and learn to love them. If we are not prepared to do that, we risk the integrity of the country, because the notion that nine provinces can survive and maintain an equalization structure for the country is, in my opinion, hopelessly remote.

I will give you an example of the kinds of choices you, as a committee in the government, are going to have to

begin to make. I have spent 30 years opposing anybody who sought to include property rights in the Constitution. I think I have some understanding from looking at the American authorities about what property rights may do to a lot of values that I regard as significant and important in the country. But let me tell you, if that was the breakpoint, I would learn to live with property rights in the Constitution to save this country even though I have devoted my whole life against it, because I believe that if that is the price we pay for Canada, and I hope it will not be, it is a price I am prepared to pay.

I think one of the things the committee has to do is to help the government by beginning to make those hard choices, informally at first and then hopefully in the next couple of months in a concrete way. One of the things I hope the committee will consider doing is this: You have been out across the province hearing what people say and it was proposed, no doubt, that you should go out again to hear what they say about this round of proposals. I think much more important than that is to try and build compromises which will provide you with some kind of political support as you come to make these hard choices. It is going to be very difficult to do. It is really an educational process. Everybody in this room knows that if this country is to be saved, a “distinct society” clause has to be in the proposals.

1650

What we had better do is get out there, not asking our constituents whether they would like it in the Constitution because many of them would not, but saying to them, “This is going to be in the Constitution, I want you to support us none the less.” That educational exercise has not begun in an effective way yet and has to begin now.

Those are the three things I wanted to say to the committee because I have a sense that we are spinning our wheels at the present time, notwithstanding the best will in the world that the hard choices we have to make in a very short time frame are not being made. The committee should begin the exercise of making those choices. The government should begin the exercise of making those choices so that in the next couple of months the government of Ontario, as all preceding governments have done, will be able to say: “This is where we stand on constitutional renewal. Much of it is unpalatable perhaps, much of it is designed to accommodate not ourselves so much as the interest of others, but this is where we are prepared to stand and we ask the public of Ontario to support us.”

That is really all I had to say. If there are any questions I would be glad to answer them.

Mrs Y. O'Neill: Thank you for coming.

Mr Scott: She asks me questions every day.

Mrs Y. O'Neill: I would really like you to talk a little bit about the social charter. That seems to be new to this round. Perhaps you know it was part of other rounds that I am not aware of. I would like you to comment on what Mr Pawley said regarding the balance between economic union and social charter.

Mr Scott: I am not going to help you, Mrs O'Neill.

Mrs Y. O'Neill: Is that new?

Mr Scott: That may not be new and it is not because I do not want to. I have my own views about the social charter and maybe I will help you this much by saying I see no harm in it and I would not oppose it, but I do not think it matters what I think about the social charter. I do not think it matters what you think about it—forgive me—I do not think it matters even what Bob Rae thinks about it. What matters is whether there are going to be enough provinces in the country that will support it at the end of the day to make it a viable proposal. That is the issue with which we have to begin to grapple. If the Premier were to tell me, "Look, I think I am going to line up seven provinces behind this," I would say, "Fine."

That is the issue. I can sit down today and draft a perfect Constitution for you. The fact that no other province would accept it and the federal government would not like it makes it a completely idle exercise. We are in a consensus brokerage situation and we might as well face it. So my view about the social charter is that I do not think it is going to wash, but I am not opposed to it. One thing I am concerned about, on the part of all governments, Quebec, Ontario and all the others, I am very leery about governments saying in advance what their conditions precedent are.

Is Ontario saying, "I can't tell"? I am not saying this critically, but when you say that aboriginal rights are a condition precedent, or a social charter is a condition precedent, or this or that is a condition precedent, you are setting yourself up for a fall, are you not? If it is part of the ultimate deal, if it is the deal that makes the country, fine, but if it is not part of the deal that other provinces can live with, then you have a terrible moment because you either have to destroy the pact and say, "We will not deal with you if you do not buy our condition precedent," or you have to turn around to the people to whom you made the promise and say, "There were bigger fish to fry, my friends, and I am terribly sorry we did not do what we told you we would do."

That is why I think we should all be very careful about getting out in front with the conditions precedent expressed in those terms. There is nothing wrong with saying we would like this or we would like that, but it seems to me it would be an act of foolhardiness for anybody at this stage to say, "I am prepared to wreck the country if this or that is not included in the Constitution," because you may be asked at the end of the day either to do that or to eat your words.

If the social charter sells, I am all in favour of it. If it does not, I can live with that too.

Mrs Y. O'Neill: You did help me, Mr Scott, as usual.

The Chair: Mr Harnick, do you have any questions? If not, we will move to Mr Malkowski.

Mr Malkowski: I like that idea of compromise when we are looking at the time lines and talking about the amending formula, how time is drawing near. In 1982 you were talking about that amending formula; some provinces at that time were not willing to make the compromise. I am sure that Ontario now is looking at a compromise position and we are looking at an educational process so we

get the support of the people. Do you think it is possible to get the agreement of all provinces if we are flexible and if we are willing to compromise?

Mr Scott: I think it is possible if there is a heightened sense of urgency and if we work extremely quickly, but I do not think it is going to be popular. That is a misfortune but, in my opinion, that is the reality. The position of Ontario is going to have to accommodate a major measure of Senate reform which will dilute the numerical power of Ontario. It is going to have to include a "distinct society" provision, in my respectful guess, which goes further than the one in the present federal proposals. That will not be popular in Ontario. It will have to involve some significant decentralization of federal power either on the economic front or on the social front, and perhaps both. I do not think that will be particularly popular in Ontario.

If you are looking, Mr Malkowski, for something that will accommodate all interests in Canada and be largely popular in any one of the provincial communities, I do not think you are going to find it. That is what a compromise is. A compromise is everybody's second or third choice. It is not a compromise if you get everything you want. To think there is some kind of consensus in this divided and beaten country at the present time is, I think, naïve.

The good news is that this is why you are going to be statesmen instead of politicians. What is the difference between a politician and a statesman? A politician does, theoretically and according to the textbook, what his constituents want. A statesman leads his or her constituents to a better objective by active leadership.

The active leadership, as Mr Pawley will tell you, is painful. The active leadership, as Mr Blakeney would have told you when he was routed from office in 1982, is painful, but you do it in the interests of the country. As my career is over, you can probably say: "Who is he to say this? We are all young," but that is life.

1700

Mr Curling: When this committee went to the Northwest Territories and to Manitoba, Charles Harnick asked a question that took people by surprise. He asked: "What if Ontario or Quebec is not in the federation? How do we see Canada? Could Canada exist in that way?" It took them by surprise, they had never even considered that. People talk about the Canada round. Is this not really the Quebec round, because regardless of what we do, regardless of what compromises we make, if Quebec is not a part of this the whole thing breaks down?

Mr Scott: I regard the Meech Lake round as an effort that I think Mr Pawley correctly identified as the Quebec round. It was an effort to bring in the single provincial institutional player that had been left out in the 1982 round. The Quebec round theory, which was attractive to all those who accepted the conventional wisdom, obviously did not work. People said, "You're not going to have a Quebec round if you leave us out," and that is why we are into this round that is much more complex than the Meech Lake round ever was. It is because at the end of the day two provinces did not approve the Langevin formula.

Ms Carter: I was interested that you brought up the time aspect of it. The only time I remember that being discussed previously, although of course I have not been on this committee very long, was when we were in Winnipeg on one leg of the trip west that we took not too long ago. That was emphasized at that meeting and there was even a suggestion that there just might not be enough time and that maybe we should come to some kind of a general agreement to leave out certain things there was not time to deal with and come back to them later. I would be interested in your comments as to whether that is a way out, whether it is possible, or whether if you said, "We'll defer this and this question until later," the opposition would be so great and so vocal that you would not in fact be able to do that.

Also, I noticed in the press in the last day or two a suggestion that Bourassa might call an early election to get in front of all of this, and I wondered how you thought that would affect the issue.

Mr Curling put part of my question. I can see the rest of Canada maybe compromising and getting together, but we still have to sell it to Quebec. It seems to me that maybe they have not really thought through properly what the alternatives to coming to an agreement are, what is going to happen if they go out on their own and whether we should not be engaging in some kind of publicity or, if you like, propaganda initiative to make sure that does not happen.

Mr Scott: First of all, I am an expert at calling an early election to get all this ahead of you. I do not think Premier Bourassa is going to be unaware of other experiences, but I think the reality he confronts in his province is very real. It may change from day to day and over the months. People tell me that the federalist forces look a little stronger now than they did three months ago and they will probably be telling me three months from now they look a little weaker than they do now, but that is the reality.

The reality is that Quebec elites and Quebec institutional thinkers have thought quite thoroughly about the prospect of independence. That does not mean they all support it, but they understand it. They have thought about it more thoroughly, I think, than the people of Ontario have thought about the consequences of their independence, and it seems to me that this referendum is almost inevitable; it cannot be avoided. If it is almost inevitable, if it is lost to the federalist side, you will see that the game gets even tougher. The exercise becomes even tougher than it is now.

Everybody said—and they were right—that the round following the Meech Lake failure would be tougher than Meech Lake, and it is. Things you would not buy in Meech Lake you are going to be asked to buy in the federal proposals. I am telling you that if a referendum occurs and the result is negative, even marginally negative, the round that follows the referendum is going to be even harder.

The other difficulty is that there are not two federalist political parties in Quebec. They do not have the luxury that we have in Ontario of having, at last count, three federalist political parties. They have one and a defeat for that one is fatal to our cause for the time being.

The other factor is of course that even if that federalist party is not yet defeated but perceives defeat on the horizon, it will be driven into the arms of those who advance a less federalist proposition, so I think that timetable is critical. I find it very difficult to see how it can be avoided. I think it is the obligation not only of the federal government, which has presented its proposals, but of the provinces to begin to present theirs to say where they stand.

We all hoot and holler about the federal government, but to its credit—and I do not give it much credit in life—at least it has provided a series of proposals. We have not and we are going to have to do so. We had better get at it. I do not think there is much time. I think if we got a series of proposals out that were saleable in English Canada and met the needs of Quebec, then that would significantly alter the prospect of a referendum.

You had a third question but I have forgotten it. I am sorry, Mrs Carter. Maybe that is enough from me for you.

The Chair: I am just wondering if Mr Offer or Mr Eves or Mr Harnick had any questions they would like to raise. If not, that is fine. We will go to Mr Winninger.

Mr Winninger: I believe my question about the feasibility of reaching a successful conclusion within these tight time constraints has already been asked. I would just like to say, though, when you sit down to draft that perfect Constitution I hope you do at least as good a job as you did when you drafted the terms of reference for a certain inquiry during the last year of your mandate.

Mr Scott: What makes you think I drafted either of those things? But I will leave that. The point I made about my drafting the Constitution is a point simply designed to encourage this government and this committee to understand that they are not going to be able to draft a Constitution, because what you want to go into that Constitution is not going to be supported by enough people in every instance. That is why some kind of brokerage exercise, out in the open if you think you can do it, but more likely not in the open, is going to have to be undertaken. There will be some downsides to that, but it is very unlikely that there is going to be a second choice.

Whatever our local critics may think of us as we discharge day by day the daily business of government, they will never forgive us in the long run if we do not have the courage, and that really means the guts and the ability, to put our reputation and our status and our role on the line to save the country.

1710

Mr Bisson: Because you have been in this Legislature for the number of years you have been and serving the people of this province, I was interested in when you talked about the difference between a statesman and a politician. I know what you are alluding to, but I want you to clarify something because it troubles me a little bit in the face of what we heard through our whole deliberations with the committee when we travelled the province, and just as recently as last weekend when we met with 130 Ontarians to discuss various issues around the Constitution. On the one hand you are saying—and I tend to agree with you up to a certain extent—that in the end politicians

have to have the courage to go out and be able to tell Canadians or Ontarians the positions we are going to have to take at the end with regard to the Constitution. I guess in the end that is what it is going to come down to.

You also said that the federal government at least has come down with a set of proposals it has put to Canadians to reflect on and have an idea where the federal government is coming from. But the one thing I think we heard through all the deliberations of witnesses who came before us, some 600, one of the biggest things, was the whole question of process where Ontarians talked about the Constitution being a document of the people, that the people should have some input so that at least the politicians are speaking the same language and not necessarily the statesmen.

I imagine there has to be some balance in that. There is a question of process we need to go through because it is a much more educated society that we have today on the part of the people of our province or our country. But being politicians, we do have to listen to what people are telling us and then we have to turn that into a certain amount of education. I know in the work that we did on the committee, just in closing, some of the positions this committee took were a direct result of what people came and presented to this committee. Without that input there are points that would have eluded us altogether. A lot of people brought a lot of good ideas, if you can elaborate a little bit more on that, because I have some difficulty.

Mr Scott: I do not think there is a consensus in this country and I do not think you are going to find a consensus even in Ontario. It is almost as if the committee going out there hearing things is waiting for a consensus to emerge that it can adopt to solve the problems. "We have listened; we have heard." This thing is taking shape and all of a sudden, "Thank God you've removed the obligation of us making any choices because it has emerged fully formed." I do not think that consensus exists now in the country and I do not think it will exist in the time frame that is permissible.

I exclude Ontario for these purposes, but there simply is not a consensus in the country around the distinct society, even with its remote or potential implications for the charter. You can search from now till doomsday, and at least in the present time frame there is not going to be a consensus around that. The Quebecers have one view and a large number—they may not be a majority—of English Canadians have another view. I believe that if we simply coast on the search for consensus it is going to elude us. It is looking for something that really is not there. What we have to do is create it, and the way you create it is by making choices and selling those choices.

One of the things I think we should do in Ontario—our Premier has come very close to it; he has not done it yet but he has come very close to it in some of his speeches—sooner or later someone is going to have to say, "Look, the debate about that 'distinct society' clause is over. To govern is to choose and we are choosing to support that," then build a consensus around that, which will not include everybody. Lots of my constituents think that the "distinct society" clause is a crock whether it is defined in the Mul-

rone proposals or the Meech Lake proposals, but sooner or later I think we have to begin to make the choices, and if you want them to be done in a public way, it seems to me we should do them in a public way.

To what extent are we prepared to accept decentralization? You can go and hear people on that from now till the end of the year 2000 and I do not think you will find a consensus. Someone is going to have to decide for us.

The Chair: Thank you very much. Mrs O'Neill. This is the last question.

Mrs Y. O'Neill: Thank you, Mr Scott. You were not among us on the weekend. I want to reinforce what you have just said, but I am sure you have read or at least seen reports of Mr Rae's speech. He was very strong that Thursday evening about what distinct society meant to him.

That was a difficult discussion group. I wandered through those discussion groups and there was one particular individual whom I remember distinctly. I do not mean to use that word twice in different forms, but he came with the very strong idea that there was no way he could support this. In the end, although not with full support, he certainly understood the issue better. In the end, I think if we look at the three things we agreed on, distinct society was one that meant many things to many people, but I think that is a perfect example of what you have just said.

Mr Scott: I was not present at your meetings. What did you agree on about the relationship between distinct society and the Charter of Rights?

Mrs Y. O'Neill: There was just the acceptance of the concept of "distinct society."

Mr Scott: So you have not yet dealt with the issue upon which everything turns. I do not understand anybody to have a complaint about a recital that you are a distinct society as long as it does not mean anything.

Mrs Y. O'Neill: I think we came to the agreement that we could accept the definition in the federal proposals.

Mr Scott: I took that to be a given even in our own communities. The issue, as you will remember from the Meech Lake round, was the question about the extent to which the presence of this phrase could be used by the court in interpreting how the existing powers of the legislature of Quebec—no new powers—were to be utilized, and that is where the issue broke down. It would be interesting to hear what your conference had to say about that, because that of course is the breakpoint in this debate.

Mrs Y. O'Neill: I must confess that the Charter of Rights is the one workshop I did not get to, but we will see from the report.

Mr Scott: Somebody has to begin the exercise of saying, "I'm sorry, this is a wonderful idea but it isn't going into the Constitution because it can't be sold to enough provinces and enough people across the country," and "I'm sorry, this item is a wonderful idea and better luck next round, but that is not going to achieve appropriate support either."

This is why I am very suspicious of exercises where everybody puts in their lists and we create the impression that we will certainly listen to all that. There is nothing

wrong with listening, but sooner or later we have to begin to make decisions. That is the government's responsibility, and we want to help it, because I know we want to be non-partisan on this. Those decisions have to be made and they are going to be tough, and for politicians they are going to be uneasy because they are not all going to be popular.

Mrs Y. O'Neill: I think the other idea that came through the conference, and certainly through Mr Rae and the two opposition leaders, was that they must take a leadership role on unity because of the alternative. I think your opening remarks, although not exactly what they said, would have been comfortable with all three of them. I think you are right, and that has to be reinforced and reiterated day after day, because there seems to be this complacency. One of the three, I am not sure which, stated that the complacency was our worst enemy.

Mr Scott: But the process has to begin. If you want it to occur in public, it seems to me it would begin in public. You can wait until the conference, which will probably not be in public, and then the premiers will emerge with what they have agreed on, or you can begin to make the decisions now. For example, where do we stand on Senate reform? Western Canadians want to know that. This is the thing they are talking about. Senate reform is a very difficult issue for Ontarians because we are nine million people in this country and Senate reform is a regional representation system that is not directly consistent, in so far as its power is concerned, with popular democracy.

Mrs Y. O'Neill: I am sure you would want to be correct. It is nine million people in this province.

Mr Scott: How many do we have?

Mrs Y. O'Neill: You said in this country.

Mr Scott: I meant in this province.

Mrs Y. O'Neill: I know, but the westerners are very touchy about us calling ourselves a country or thinking we are.

Mr Scott: If anybody is watching this on television, this will get me into a lot of trouble back home because people will say: "You are not interested in consulting and you are not interested in doing what I want you to do. You have your own ideas and who the hell do you think you are anyway?"

I think we are at a stage where politicians, having been elected and having got the support of their communities, have to begin the business of taking hard decisions. Hard decisions sometimes mean things like raising taxes to pay for services we provide to people or cutting back on non-essential services. I wish we had a political environment in which every decision to be taken was easy and pleasant, but that is not the job. We have all learned that and we might as well get started on it.

The Chair: Mr Scott, I want to thank you very much on behalf of the select committee for coming here and helping us to look at some of these questions. You have certainly challenged us with some of your views.

I would like to ask the committee members to stay, and we will move into closed session to deal with some house-keeping issues now.

The committee continued in camera at 1721.

CONTENTS

Wednesday 23 October 1991

Howard Pawley	C-1487
Ian Scott	C-1493

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

Acting Chair: Drainville, Dennis (Victoria-Haliburton NDP)

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Gigantes, Evelyn (Ottawa Centre NDP)

Harnick, Charles (Willowdale PC)

Harrington, Margaret H. (Niagara Falls NDP)

Malkowski, Gary (York East NDP)

Mathysen, Irene (Middlesex NDP)

Offer, Steven (Mississauga North L)

O'Neill, Yvonne (Ottawa-Rideau L)

Winner, David (London South NDP)

Clerk: Brown, Harold

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Le mercredi 30 octobre 1991

Select committee on Ontario in Confederation

Comité spécial sur le rôle de l'Ontario au sein de la Confédération



Acting Chair: Dennis Drainville
Clerk: Harold Brown

Président suppléant : Dennis Drainville
Greffier : Harold Brown

Published by the Legislative Assembly of Ontario
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Table of Contents

Table of Contents for proceedings reported in this issue appears at the back, together with a list of committee members and other members taking part.

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Table des matières

La table des matières des séances rapportées dans ce numéro se trouve à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et des autres députés ayant participé.

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au (416) 325-7400.

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

Wednesday 30 October 1991

The committee met at 1535 in room 151.

ONTARIO FEDERATION OF STUDENTS

The Chair: Mr Craft, I want to welcome you and thank you for being willing, on reasonably short notice, to come before the select committee on Ontario in Confederation to respond to the federal proposals. Not being that long out of university, I have a great appreciation for the work the Ontario Federation of Students has done in the past. For the record, could you give your name and the organization you represent. We hope you have 15 minutes of speaking, and if we could have 15 minutes to ask you questions, that would work out quite well for us.

Mr Craft: Certainly. That is good. My name is Ken Craft. I am with the Ontario Federation of Students.

The Ontario Federation of Students welcomes the opportunity to present to the select committee on Ontario in Confederation. We represent over 210,000 college and university students in Ontario and are closely associated with the Canadian Federation of Students, which represents almost 500,000 students across Canada. Our goal is to improve both the accessibility and quality of Ontario's post-secondary education system through lobbying, province-wide political action campaigns and research. We also work on issues of equal concern to students, such as employment, women's issues, human rights and international affairs. Since 1972 we have been the established voice for post-secondary students in Ontario.

Our brief will discuss the recent federal government proposals for constitutional reform as they pertain to post-secondary education. However, we would like to inform the committee of several federation policies pertinent to the committee's deliberations.

At the 1990 general meeting of the federation we adopted the following policy: "Be it resolved that the OFS/FEO endorse the proposal that a unilingual French university be maintained in northern Ontario."

At the 1988 general meeting we adopted the following: "Support the creation of an autonomous, unilingual francophone university in Ontario."

At that same meeting we adopted the following policy: "Support the creation of three autonomous unilingual francophone community colleges in Ontario; one college to be located in the east, one in the north and one in the south. These three colleges to be supervised by a unilingual French Council of Regents."

The year before we passed the following motion: "Endorse the demand for accessibility to French universities and colleges in Ontario, so as to give Franco-Ontarians the right to post-secondary education in their own language."

Finally, in 1986 we passed the following motion: "Urge the expansion of the number of courses taught in French at all post-secondary institutions in Ontario."

The federal budget and post-secondary education: The last federal budget extended a freeze on transfers to the provinces from two to five years. Keeping to the current trend, federal transfers for provincial health and post-secondary education programs will be effectively eliminated over the next 10 to 15 years.

Federal funds account for almost three quarters of the total provincial budget for post-secondary education in Ontario. As a result of the federal cutbacks to post-secondary education through established programs financing, colleges and universities in Ontario will lose approximately \$1.14 billion from 1990-91 through 1994-95. Total losses to post-secondary education across the country will exceed \$3 billion. Recent trends of federal and provincial restraint will inevitably lead to more calls for increased user fees—tuition and incidental fees—and less student aid. Meanwhile, underfunding will cause the post-secondary system to cease to function. Access to education will be restricted to wealthy people in the wealthy provinces, as it has been in the past.

The federal government's initiatives to absolve itself of responsibility for funding post-secondary education, setting educational standards and providing a national system of grants are part and parcel of its agenda of massive decentralization. This agenda is the overriding theme for its newest proposal in constitutional reform. The proposal would restrict the right of the federal government to implement new national programs in the areas of provincial jurisdiction. This would make a system of national standards for student aid or access to education a virtual impossibility.

Such programs, we feel, are critical if Canada's commitment to accessible post-secondary education is to be anything but hollow. I am not sure if the members of the committee are aware of this, but the federal government is a signatory to an international covenant to the progressive abolition of tuition fees in this country. Its cutbacks in established programs financing show anything but a commitment to removing this impediment to post-secondary education.

The government's constitutional proposal would also give the provinces complete control over training and eliminate any federal responsibility. This proposal is made despite the government's attestation that the unemployment insurance program was slashed to provide more money for federal training programs.

The federation supports the establishment of national programs for post-secondary education because it believes all people in Canada should have equal access to high-quality services regardless of where they live.

At the end of the 1930s, university enrolment in Canada was 36,000 students. Private funding was the principal source of its support, with student fees accounting for 33% of the budgets of universities and colleges. After the Second World War, veterans began enrolling in post-secondary

education. By 1946-47 they accounted for about half of the total university enrolment. The veterans themselves received government support to continue their education, and at the urging of the National Conference of Canadian Universities, the predecessor of the Association of Universities and Colleges of Canada, the universities also received annual grants of \$150 for every veteran enrolled.

By the early 1950s most of the veterans had graduated. As a consequence, the universities were losing the federal veterans' grants. Universities, however, were faced with the need to maintain expanded facilities to support the growing enrolment of civilians. Here began the federal government's long-term commitment to funding post-secondary education. In 1951-52 the federal government began a program of university grants at the rate of 50 cents per capita of provincial population. By the last year of the program, 1966-67, the rate had risen to an average of \$5 per capita. This amounted to about \$100 million. Payment in all provinces except Quebec was made directly to the eligible institutions. After 1966-67, post-secondary education support payments were made directly to provincial governments.

The 1967 Federal-Provincial Fiscal Arrangements Act provided for federal transfers to the provinces amounting to either \$15 per capita of provincial population or 50% of eligible operating expenditures for post-secondary education incurred in the province, whichever was greater. The total transfer was made up of two general components: a transfer of taxing power and cash adjustment payments to bring the total transfer up to each provincial entitlement.

The 1967 act resulted in a number of problems for both the federal and provincial governments. In the first three years, costs rose about 20% per year, with cash payments rising faster than the tax-point component. The fact that the entitlement for each province was determined by the amount spent by the province's colleges and universities meant that the federal government had no control over the cash it paid. Spending rose from \$422 million in 1967-68 to \$1,778,000,000 in 1976-77. As a result, the federal government capped the overall increase at 15% in 1972. In addition, the program required continuous auditing to ensure that only eligible expenditures were included.

After 1977-78, the programs for post-secondary education, medicare and hospital insurance were financed by block funding to each province. Funding was unconditional. These block funds were provided for under the Federal-Provincial Fiscal Arrangements and Established Programs Financing Act, 1977. This act was amended in 1984 and is now officially called the Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act, 1977, but it is usually referred to by its former title, EPF.

In 1982, some technical changes altered the original 1977 formula. This marked the beginning of the federal government's retreat from funding post-secondary education. Instead of having to match funds to get funds, provinces got block transfers regardless of how much they committed out of their treasuries. The current federal government has restricted the growth of EPF transfers to the point where they are effectively shrinking and will be eliminated in the next 10 to 15 years. The federation

believes there are problems with the current system, but it is vastly preferable to having no system at all.

While the block funds are intended for spending on post-secondary education and health care programs, there is no mechanism to ensure the funds are actually used for this purpose. EPF has no mechanism for accountability; that is, once the post-secondary education entitlement has been handed over to the provinces, it is deposited into the general revenue and from that point on, no guarantees exist to ensure that post-secondary education funds are allocated to the universities or colleges. In 1984, the Liberal government ensured more accountability for health spending by establishing the Canada Health Act. However, spending on post-secondary education remained unconditional.

The OFS believes Canadians are concerned about more than just the free flow of goods and capital. They are concerned about the right to education—primary, secondary and post-secondary—health care and social security. But the proposed Canada clause makes no mention of any of this, referring instead to a vacuous "commitment to the wellbeing of all Canadians." This statement should come as cold comfort to the millions of Canadians whose wellbeing has been eroded or destroyed by federal government policies such as free trade, the goods and services tax and cuts to unemployment insurance.

In the case of post-secondary education, we have outlined how the federal government has laid the basis for the financial ruin of our colleges and universities. We have explained how the proposals would make it nearly impossible to recoup these losses through any new federal initiatives. We should also point out that its intention to privatize the Canada student loan program and its introduction of a 3% user fee on student loans also jeopardize the future of education in Canada. These measures would render any constitutional commitment to education a complete and utter farce.

The federation urges the Ontario government to oppose the federal government's Shaping Canada's Future Together proposals and instead support a restoration of cost-shared provincial-federal funding arrangements for post-secondary education, a national system of student grants as opposed to the current mixture of loans and grants, the inclusion of post-secondary education as a fundamental social right in the Constitution—I think that would fit quite nicely into Premier Rae's suggestions for entrenching social rights in the Constitution—and a mechanism to ensure federal-provincial accountability for post-secondary funding.

Thank you very much for this opportunity to make this presentation.

Mr Offer: Thank you for your presentation. I think we are all very well aware of the work done by the Ontario Federation of Students over the years, and some of the concerns and issues highlighted in your brief certainly attest to the good work of the Ontario Federation of Students.

My question deals with where the OFS is. Do you want the central government to have more of a role to play in post-secondary education in this country and would you rather see it as a federal power as opposed to the shared provincial? The reason I am asking this is that, on one hand, you say you would like this to be a clear-cut federal

jurisdiction without any provincial contribution whatsoever and, on the other hand, you are talking about some very deep concerns about contributions by that central government. I am wondering if you might want to help us on that. I have one other question after that, Mr Chair.

Mr Craft: The position of the Ontario Federation of Students on funding of post-secondary education is the same as that of the Canadian Federation of Students. At our last general meeting we adopted the Strategy for Change, which was the CFS's position.

To summarize it briefly, it called for a minimum 3% corporate tax to pay for the post-secondary education system and it called for a national system of grants, as opposed to a loan and grant system, arguing that the best form of income-contingent repayment of university education is through a progressive income tax system.

Essentially the position of the Ontario Federation of Students is that the federal government should be funding it completely through taxation and that it should be setting national standards. However, it could transfer that money to the provinces, and the provinces could then continue to use that money to administer the system while adhering to national standards.

Mr Offer: Some of the points you are bringing forward deal with the ongoing issues the federation deals with, as many other people deal with issues on an ongoing basis. This committee is dealing with the Constitution and the federal proposal. What if the federal proposal does not contain these particular points? What if it does not meet the concerns and the issues of the Ontario Federation of Students? Are you and the Ontario Federation of Students prepared to say categorically to any proposal, "We reject it," even fully aware of what that means to the future of the country? Because that is where we are right now.

1550

Mr Craft: The Ontario Federation of Students has not sat down as a plenary and fully debated what it would do if its proposals were not put in, so any answer I give would have to be prefaced with that.

No, I do not believe the federation will do that. There is a possibility that it could. I cannot speak for the members. They will decide something like that in January, but if what we are lobbying for is not included in that Constitution, we will continue to do what we have done since 1972, which is lobby for the inclusion of these sorts of changes to the way the country is governed.

Mr Offer: Thank you very much for the frankness of your response. It is going to help us as we start to move into what this committee really is all about.

Mr Eves: On the last page of your submission you have a statement, "The federation urges the Ontario government to oppose the federal government's...proposals." I am a little concerned about that.

Everybody has accepted the fact, including every premier that I can think of, that we have to start somewhere, and as a discussion point—not to say they cannot be improved upon and changed in many ways—there are the federal proposals. Do you really mean what you say there and, if so, why?

Mr Craft: It may be worded a little strongly and may need a few qualifiers that were not put in there. Essentially what the federation is saying is that, as it stands now, it is something we oppose and we want the Ontario government to oppose. The major things we want to see put in there for amendments are the four things that are enumerated on the last page.

We in the federation are very much aware of the delicateness of the situation. I myself am a Canadian historian and I am very much aware of the delicacy of constitutional negotiations and all the different constitutions we have had as a country over the past 200 years. That is essentially saying we do not like it the way it is. It needs to be worked on and here is the sort of way that we can see it being fixed.

Mr Eves: Okay. That is a fair comment. I have one more brief question.

When you talk about the inclusion of post-secondary education as a fundamental social right in the Constitution, is it your view that is a justiciable right? We had a meeting here Monday evening with the federal joint committee on the Constitution and I think it is fair to say that there seems to be much more ground for compromise than I had thought there might be. I was pleasantly surprised, for example, when I was talking about whether or not a social charter or social rights in fact would be court enforceable.

Mr Nystrom of the federal NDP indicated that he has never thought they should be justiciable rights. He thought they should be rights that are enforced by some other mechanism such as the Council of the Federation or new Senate, whatever you want to call it. I wonder what your comments are about that.

Mr Craft: I think it could be a right enforced in any way possible. I guess our feeling on post-secondary education, the reason why we want to see it enshrined as a right, is that we feel education is a right for every individual within the Canadian society; and if it is a right, what follows from that is the fact that it should be something that is free and paid for by the government. I am not sure I am answering your question too well here, but they could be put in there in a lot of different ways. It does not necessarily have to be under the Charter of Rights and Freedoms.

Mr Eves: So you are very flexible with respect to that, as long as the right is in there.

Mr Craft: Yes, we are.

Mr Winninger: You have recommended the inclusion of post-secondary education as a fundamental social right in the Constitution. I would like to explore that with you, because we need to fill in some of the detail in connection with this concept of a social charter.

I might agree that financial limitation should not stand in the way of access to post-secondary education, but if we include post-secondary education as a fundamental social right, what happens if a university says, "You don't meet our academic standards. We can't admit you"? The academic standards may change from university to university. Can that person then try to enforce his or her right to attend a university or college, notwithstanding he or she may not make the grade?

Mr Craft: I would assume not. There are always going to be standards within any educational system for progression through the ranks. I do not believe by including that as a right that it would mean every person, regardless of his ability, would be able to go on to post-secondary education, even though we do believe that everyone should have the opportunity, because with society moving into the 21st century, most jobs are going to require some sort of post-secondary education in order to be a profitable citizen in Canada.

Mr Winninger: Do you think that limitation should be spelled out or do you think it is implicit in the kind of right you would like to see enshrined in a charter?

Mr Craft: I think it is implicit in common law and in the Canadian Charter of Rights and Freedoms, as I understand it now, that you are allowed reasonable limitations upon things. That would be subject to judicial review, though.

Mr Winninger: Thank you.

Mr Harnick: One of the things that causes me some concern is where you draw the line about what should be formally entrenched in the Constitution and what should be the policy of a government in terms of the legislation it is going to enact. When I see things such as a national system of student grants or the inclusion of post-secondary school as a fundamental social right, I tend to ask where, if these things are entrenched in the Constitution, the government is going to get the money to do all these things. And if governments cannot afford to do these things, are they breaching the Constitution? Are you setting governments up to be in default of their obligations under the Constitution because the funds are just not there to pay for these kinds of things?

Mr Craft: We at the Ontario Federation of Students believe the CFS Strategy for Change provides a very workable framework for paying for this. In Canada, corporations pay the second-lowest base corporate tax in the western world. By placing a 3% corporate tax on them, a surcharge for post-secondary education, that would provide the amount of money that is in the system now and I believe another 30% above that and would be able to pay for that system.

Mr Harnick: Why do you decide to pick on corporations to pay that bill? Corporations maybe should pay 3% more so we do not have to close hospital beds or corporations should maybe pay 3% more so that our environment is clean. Why do you walk in here and all of a sudden assume that you are going to pick one institution out of society to pay your bills? What makes you more special than every other group that wants corporations to pay its bills?

Mr Craft: I do not think we feel that we are any more special than any other group in society that wants corporations to pay its bills. What we do believe within the Ontario Federation of Students is that the primary beneficiary of education in this country is the private corporations, and we believe that since they are paying the second-lowest tax within the western world, a 3% corporate tax upon them would not be onerous and would certainly make them pay their fair share for the educated workforce they get out of the post-secondary educational system in Canada.

The Chair: Mr Harnick, I am going to interject there, because this is not a discussion. You have asked some questions and I think your point has been made. I also think Mr Craft's point was made. I went out of rotation because I did not see Mrs O'Neill, but I will turn to her now.

Mrs Y. O'Neill: I would like you to verify the statement you have been making about the second lowest. Could you tell us what other country is paying lower?

Mr Craft: The United States of America.

Mrs Y. O'Neill: Okay, thank you. I wanted to have that on the record.

You speak of mechanisms to ensure federal and provincial accountability. Because you have made such a sweeping statement, that you want us to basically oppose the Shaping Canada's Future Together document, have you examined at all within your organization the Council of the Federation, which is a body that is suggested within the document? Certainly the Senate in its reformed state could be another. Have you examined any of those things in reference to your requests for standards and for funding?

Mr Craft: Yes, we have. The funding mechanism that we would like to see for post-secondary education is essentially the same one that exists in the health transfer payments, in which the provincial governments would be penalized dollar for dollar for each dollar that they do not spend.

Mrs Y. O'Neill: When you talk about a mechanism for accountability, is that what you are talking about?

Mr Craft: Yes, it is.

1600

Mrs Y. O'Neill: I go to a lot of university graduations because the city I represent happens to have two universities. There are many age groups within those graduation classes and I am very supportive of that. What are you suggesting here, a life-long ability to return to post-secondary education at the cost of the existing governments?

Mr Craft: Yes, we are.

Mrs Y. O'Neill: That sounds a little bit difficult.

Mr Malkowski: You presented very well, but I want to ask you two specific questions. Do you support native governments for education? What is your organization's position on that? You look at other countries in the western world which include the right to post-secondary education within their constitutions and where the goal is no tuition fees, and our Constitution is silent on that. What is your position?

Mr Craft: I will deal with the second one first. I believe the second one was essentially asking what our position was on tuition fees. We believe in the progressive abolition of tuition fees and post-secondary education being free for students.

On the first one, I believe I have been asked what our position is on native education rights. We have been working very hard to make sure that there are educational programs for native Canadians at post-secondary institutions and that they have a very large part in deciding what that curriculum is going to be in order to meet their needs.

The Chair: Mr Craft, I want to thank you on behalf of the committee for coming forward with your brief. I appreciate the short amount of time that you have had to prepare this to bring to us. Please give our regards to the organization. We hope you will continue to watch our deliberations as we go forward. We are hopeful that in February we will have our final report out.

CANADIAN ETHNOCULTURAL COUNCIL

The Chair: I now call the representatives from the Canadian Ethnocultural Council. Welcome.

Mr Malicki: Thank you very much. I will introduce the persons present today. We represent the Canadian Ethnocultural Council. My name is Marek Malicki. I am the vice-president of the Canadian Ethnocultural Council and at the same time the president of the Canadian Polish Congress. I also practise law in the city of Mississauga. Magda Theoharous is the secretary of the ethnocultural council and the vice-president of the Cypriot Federation of Canada, and she works in Toronto. Anna Chiappa is the interim executive director of the Canadian Ethnocultural Council and she is with our office in Ottawa.

Very briefly, who are we? The Canadian Ethnocultural Council consists of 37 national ethnocultural organizations. If you look at the very back page of the submissions we have made, you will see the names of the various ethnocultural organizations. These are national organizations and include some of the largest ethnocultural groups, such as Ukrainian, German, Jewish and all the other groups that you see on the back. The ethnocultural council acts by consensus. It is not a body that imposes its decisions or policies, but it is an opportunity for the various groups to get together and formulate policies on issues that are of concern to them.

Canada is composed by more than 40% of people whose ancestry is neither British nor French; in Ontario, it is closer to 49%; and in Metropolitan Toronto, probably closer to 60%.

The Canadian Ethnocultural Council was formed in 1980. Among its goals are equality and fairness in Canada. Certainly most recently national unity is one of its main topics for discussion. The groups make their own individual submissions to provincial governments, the federal government and whatever bodies they think may be able to influence the future course of Canada.

Let me simply indicate at the very beginning that all our groups are committed to a united Canada, and we are committed to ensuring that we can help in whatever way possible to ensure our continuation as one country. There are several specific points that we will touch on. In a moment I will permit Ms Theoharous to deal with our position on the concept of a "distinct society" and the "notwithstanding" clause in the Constitution, and Ms Chiappa on the question of aboriginal rights, and I will complete this presentation with some submissions with respect to the Canada clause.

We think that Ontario and the submissions of this committee will be one of the integral contributions to the national debate. We are under no illusion that Ontario perhaps is the single most important player in this. We also are well aware of the composition of the population of Ontario. We

have direct access to the grass roots. We have access to the media and various ethnocultural languages. We are also involved on the community level with social programs, whether it be immigration, seniors or work in other areas.

We think the concept that has arisen in Ontario of a national social charter is a very interesting and relevant approach, one that of course has to be studied but one that we think is very well worth considering in elaboration. It is certainly something that makes us very distinct from the United States of America and something worth preserving.

Getting down to the meat of this presentation, perhaps I can give Magda an opportunity to present two of our points.

Ms Theoharous: The views we are putting forward focus particularly on minority rights and represent a wide consensus. They are also from a perspective that believes in the advancement of multiculturalism in the widest and most Canadian sense of the word. What I will be dealing with first is proposal one, dealing with the "notwithstanding" clause and guaranteeing minority rights.

We, the Canadian Ethnocultural Council, view the "notwithstanding" clause—that is, section 33 of the Charter of Rights—to be a clause that allows a government to ignore the rights of Canadians as guaranteed in the Canadian Charter of Rights and Freedoms and to pursue rights as it sees fit. We believe there is a potential for abuse there, and for minorities such a provision is not a reassuring one. Our preference has always been to have the clause repealed entirely. However, since that does not seem a realistic goal at this time, and since there may be some circumstances when the clause could be necessary, we believe that its use should be limited further.

The rights of minorities should also be ensured in a manner that is free from this override. The "notwithstanding" clause can be used in reference to section 2 and sections 7 to 15 only. We therefore would like the equality rights clauses exempted or a clause similar to the gender equality clause, section 28, to be placed such that it is outside the purview of the "notwithstanding" clause.

We recommend that the use of the "notwithstanding" clause be further limited such that a vote needed to invoke this clause (1) be supported by 66% of the members of Parliament; (2) be supported by members of more than one political party; (3) be renewed every two years instead of the current five years.

Furthermore, we recommend that section 15, which deals with equality rights, should be exempted from the "notwithstanding" clause, or a new section should be added to section 27, the multicultural heritage clause, or to section 28, guaranteeing rights and freedoms to persons regardless of origin.

Moving on to the distinct society, there should be a clarifying of the issue. The cultural diversity of Canada must be clearly recognized and rights guaranteed in the new package; otherwise, one third of the Canadian population will be left out. The distinct society and linguistic duality proposals to be added to the charter will be parallel to the multiculturalism and gender equality sections; that is, sections 27 and 28. The "distinct society" clause will be an interpretative clause applying to the entire charter in a manner parallel to the multiculturalism clause, section 27,

and the gender equality clause, section 28. The wording, which is similar to the multiculturalism clause, will be interpretative and will help in the interpretation of other sections in the charter.

1610

All these clauses will have to be considered simultaneously by the courts without any one overriding or subverting the other. Had Quebec been an active participant in the 1981 constitutional round, such clauses would have been included. The federal proposals go further than the Meech proposal in that they define the distinct society. Because the clause will be interpreted along with other clauses, it is unlikely to threaten minority rights in Quebec, although this should be further examined.

Another point to consider is that this clause is designed to defend a language and culture, a concept not foreign to multiculturalism. It is a much-needed affirmative measure. Since the Meech proposal was released in 1987, the council has been on record as generally supportive of the clause. The definition is an improvement on the original wording.

Ms Chiappa: With respect to aboriginal rights, the CEC has long been concerned that the status of aboriginal peoples has remained at an unacceptable level. We have supported the need for a royal commission on aboriginal peoples and are pleased to see it now in effect.

This round of constitutional development must settle the constitutional issues of concern to aboriginal peoples. While we welcome some of the proposals, we feel they should be strengthened to recognize the inherent right of self-government and to ensure speedy settlement of outstanding issues.

Therefore the CEC recommends that this constitutional round include a recognition that aboriginal peoples have an inherent right to self-government; that the issue of self-government be resolved now rather than over the proposed 10 years; that the national aboriginal organizations be included at constitutional meetings of first ministers, and that mechanisms be established to ensure protection of aboriginal land rights and the resolution of land claims.

On this note, on behalf of the CEC I would like to praise the government of Ontario for its support and leadership with respect to aboriginal rights.

Mr Malicki: Perhaps I can conclude with some comments on the Canada clause. I will not read from our presentation, because that can be read separately.

Let me say first of all that our membership supports the concept of a Canada clause. The Canada clause really will be the context within which the Constitution and its provisions will be interpreted. Whether we delude ourselves now that it will be part of any court's consideration or not, it ultimately will be the framework within which the whole concept of the issues in the Constitution will be interpreted. It is a statement of principles of who we are. The way it is drafted by the federal government now is too intangible. Perhaps it is done intentionally so that it is susceptible to many interpretations and will offend no one. It has to be more specific. We must not be afraid to define who we are. We have to be a bit more assertive. We cannot avoid a statement of what we believe in and who we are.

We believe the concept of two founding nations, however, is incorrect and misleading. It is more important to state who we are presently and what the composition of our nation is. There is no need to maintain any subtle categories or distinctions of who we are. We support the concept of a bilingual and multicultural country.

When we leave Canada, we suddenly realize that we really are in the vanguard of change in the world. Canada is held up in the world as an example of how a country can develop in a multicultural concept, and we underestimate how important that is to us and how the world views us. Really, what we do is analogous to what citizenship in the Roman Empire was, the concept of *oikoumene* of Alexander the Great that all members are part of one great polity.

We do not understand that multiculturalism, which some of us see as a threat, is something the world looks at with envy. They do not see the internal bickering we have; they look at us with envy. We have to look at Canada as it is today and not delude ourselves that there were somehow two founding nations, because there were not; there were many founding nations. Talk to the Germans who came here in the late 1700s and 1800s and helped settle the country.

There is concern about many of the positions the government takes in the Canada clause, but there is one in particular that is very ambiguous and susceptible to various interpretations—the statement that there should be a recognition of the responsibility of governments to preserve Canada's two linguistic majorities and minorities. How do we preserve linguistic majorities? As opposed to what? In what way? Do they need preserving? What is the nature of the government's responsibilities to preserving these two linguistic majorities? To preserve them in terms of language, in terms of culture? In the end, one does not know what the federal government intended by putting that clause in.

I think any attempt to define this country in terms of two founding nations will be very divisive. It leaves out a very considerable portion of the country, a population of the country which is dedicated to preserving the unity of Canada but feels left out of the discussion. I think the overwhelming concern about Quebec leaving Canada tends to focus this as an English-French issue and tends to lose sight of the fact that 40% of Canadians are committed to preserving a united Canada and want to have an active participation in it.

The Canada clause should be more specific. It should not be afraid to define who we think we are as Canadians. Those are our submissions. Thank you.

Mr Bisson: I just want to touch very briefly on something you have mentioned, and I have heard this on a number of occasions from people in regard to the federal proposals around aboriginal recognition of self-government. Many people we have talked to who have presented to us and many people out in society have read page 8 as meaning to say that the whole process is delayed for 10 years.

There are two points that are made there. What it says here is "that the general enforceability of the right be delayed for a period of up to 10 years from the time that the amendment is adopted," but then it goes on to say "that during this initial stage, agreements reached in negotiations

will proceed and that agreements reached will receive constitutional protection as they are developed."

I might be mistaken, but the way I read that, it means that if you come up to a deal with the federal government and a particular aboriginal group in Manitoba, Ontario or wherever it might be, and come to an understanding with the federal government within the 10 years, this would be protected under the Constitution after the time the amendments are put in.

What you have said, and what other people have said, makes it sound as if it cannot happen for 10 years. Could you clarify that for me?

Ms Chiappa: I do not have the document in front of me, but my general feeling, based on our quick look at it, was that it appeared it would take 10 years to make those decisions, as opposed to making some decisions now in terms of some of the problems. It has come out misleading and it is something we have to take a look at in greater detail.

One of the points we did neglect to make was the fact that this is a preliminary analysis, from our point of view. On November 17, the board of 37 presidents will be meeting to look at this in greater detail, and those are the kinds of things we will be looking at.

Mr Bisson: I just asked the question because maybe I am not reading it properly. A number of people have said that about that proposal. I am just wondering if I am interpreting it improperly.

Mr Malicki: It may very well be. It is obvious the federal government intended to make these much more general than the previous ones simply so that there would be no preconceptions as to what was intended to be done. There is an advantage to that, but there is a disadvantage also in that really those who discuss the proposals do not really know what the federal government intends.

I think the aboriginal groups are concerned that the interpretation we put on is the one they put on it, whereas the federal government may have something completely different in mind. I think it is necessary, certainly in certain aspects of the federal proposals, to be much more specific, without the fear of offending particular groups.

Mr Bisson: The thing is that it is interpreted from where we come from and from what our perceptions are of the integrity of the federal government.

Mr Malicki: Very much so.

Mr Bisson: Just the last point on that. As on aboriginal issues, and other issues relating to the Constitution, you are advocating from your position that the interpretation of our Charter of Rights and Freedoms be done through the courts. Has your group talked about the possibility of looking at that being a role of a reformed Senate? What I am basically saying is that I personally have some fears. I would feel much more comfortable having the Constitution interpreted by elected officials in a Senate than non-elected people on a court somewhere.

Mr Malicki: Well, that is susceptible also to various interpretations. Remember, we represent 37 ethnocultural organizations from Nova Scotia to British Columbia. A Canadian of Polish origin in Halifax will look at these

things differently than one from BC, so it would be ill advised of us to say there is a general consensus.

I am a lawyer by profession and I am much more confident in the court's interpreting this than politicians.

Mr Bisson: I will not hold that against you.

Mr Malicki: As far as the role of the Senate, there are different views throughout the country. Clearly there has to be Senate reform. I do not think there is any clear-cut view as to what the role of the Senate will be in the future will be. We are all very sanguine about how wise the deliberations of the future Senate will be, but I am not persuaded that it will be the best forum in which to make these decisions.

1620

Ms Chiappa: If I could just add to that, I think there are also concerns expressed in this paper regarding the voice of minorities in an elected Senate, for example. We are still questioning whether that would be the most appropriate way to take into account the concerns of racial and ethnic minorities.

Mrs Y. O'Neill: I would like to talk about the Canada clause because, as you likely realize, you are one of the few groups to talk to us consistently about the Canada clause. I would like first of all to ask you to respond to the federal proposal of such. My second question would be, have you as a group, or will you on November 17, actually be putting together some words or suggesting what things in the federal proposal you can agree with?

The reason I say this is that at our conference held in mid-October, the Canada clause we were working with or trying to develop did not seem to have enough oomph as we were working. Of course, we had a very short time. Would you please respond to that first, and then I have one brief other question.

Mr Malicki: We think the Canada clause is important. It has to be there. We have to define who we are. We put together a Canada clause that we felt was acceptable and suitable, and then Mr Clark came up with some new proposals. We want to be able to consider the Canada clause that we drafted in the context of those new proposals, which we will be doing in November. We certainly can undertake to provide you with any revised versions that we have, simply for your consideration as to how the Canadian Ethnocultural Council views the Canada clause should be phrased.

Mrs Y. O'Neill: You will send us the results of that conference and what you have developed?

Mr Malicki: Yes. I concur with you entirely; there is not enough oomph in it. It is very watered down the way it is.

Mrs Y. O'Neill: Although you did not attend to it in your presentation, I think with the answer to Mr Bisson you touched on this. As you said, there seems to be a lot of indefinite response to Senate reform. People want it, but what does it mean?

I guess some of the groups, like yourself and some women's groups and certainly aboriginal groups, are wondering if the Senate would be as reflective under new considerations as it is now, and how could we be sure there would be a certain number of francophones, a certain number of

women, a certain number of aboriginals, indeed a certain number of many of the cultures you have represented over a long period of time? Political leaders, in appointments to the Senate, have been somewhat sensitive to that, maybe not as much as some people would hope, but certainly somewhat. Meaningful built-in mechanisms of involvement and then the representation aspect of it—are you quite fearful that things could slide, and how would you try to prevent it?

Mr Malicki: We are concerned about it. We are concerned that the criteria that may be used may be based on what may be territorial consideration. It may be other kinds of considerations whereby the various groups that have come from different cultures will have an under-representation in the Senate and the perspective they have on the future development of Canada may simply not be heard.

As an analogy, I will give you something positive that has been done in Ontario to remedy a similar situation; that is, in the court system. The attempt of the Ontario government to ensure that there is an equal number or a greater number of women judges, of the disabled, of visible minorities as judges in the system is an attempt to remedy a very great deficiency that existed in our judicial system.

I do not know how one can work out a formula to make sure that an analogous form of choosing a Senate that is truly representative is made, but our concern is that the same thing will develop in the Senate as developed in the judicial system over many years in Ontario; in other words, people deciding our future who do not truly represent the cross-section of our society. That is of very great concern to the ethnocultural communities.

Mrs Y. O'Neill: And to some of the rest of us as well.

Mr Malkowski: Do you feel that the Canada clause protects the rights for the use of cultural interpreters in court as well as heritage language? Do you feel there is enough protection in the current clause?

Mr Malicki: The short answer is no. The longer answer is that, because of the very general way in which that clause is phrased, it can be argued from the drafters' point of view that it is all included there. But I suggest to you that they did not address their minds to these considerations when it was drafted. If we are more specific in that Canada clause, they have to direct their minds specifically to the issues you raised. I agree; those are matters that should be considered in the drafting of a more specific Canada clause.

Mr Offer: My question deals with the distinct society proposal. Reading it and reading it against the federal proposal, which talks about interpreting the charter in a manner consistent with Quebec as a distinct society and also, again, interpreting the charter in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians, it seems to me that is what you are saying in your proposal. I am just wondering if you might want to verify that in fact your proposal agrees with the federal proposal.

Ms Theoharous: I would say that we agree there should be certain changes there, but the "notwithstanding" clause should be worded in such a way that it will guarantee—especially section 15 for the equality rights should be

exempted from the "notwithstanding" clause. That is what we are saying. We are saying that because we see that the "notwithstanding" clause leaves them open to potential abuse of clauses such as section 15, where the minority rights are protected right now.

Mr Malicki: Let me just add to that. Our initial concern with the "distinct society" clause when the original Meech proposals came out—and this is not only the ethnocultural council in general, but most members—is that it would lead to different classes of citizens throughout the country. Meech failed because there was a perception that different people would be treated differently in different parts of the country.

We are now faced with a different set of circumstances, and we can all perceive the future of Canada and the unity of Canada as being an issue that has to be dealt with now. In the same way as Mr Wells of Newfoundland has come around to some extent in his thinking that the concept of a distinct society can exist at the same as assuring an equality of rights to all people, we do not disagree with the concept of a distinct society, as long as there is adequate protection to those who want equality of rights with the rest of Canada. That is the general concept.

Mr Offer: Yes, that just brings you right back to the question, and I think it is very important for our committee to know, because one of the essential elements we are going to have to deal with is "distinct society." It just appears to me from your presentation that in the main you agree with the federal proposal, which recognizes Quebec as a distinct society, and also in the charter provisions, which talk about the interpretation of the charter in a manner consistent with the enhancement of the multicultural heritage of Canadians. It will be important for us to have and to keep in mind that you are in favour of this.

Mr Malicki: We are in favour of it because it may be the only way to preserve the unity of our country.

Mr Offer: I agree.

Mr Bisson: That was a good answer.

Ms Chiappa: Again, I would like to stress the fact that we will also be discussing this at our board of presidents meeting, so generally yes, but we still have to go back to our board of presidents to have unanimity and consensus on that.

Mr Harnick: I was interested in your area dealing with the Canada clause and the founding nations and your feelings about that. We have heard people come before this committee to say that there are three founding nations; we should recognize the three founding nations. We have heard other individuals come before us and say that they may have been the founding nations, but by recognizing the three founding nations, you are ignoring the country as it exists now. Is there a way you can see to recognize the three founding nations and the country as it exists now?

1630

Mr Malicki: You know, it is strange that in Canada we are so lacking in self-confidence that we have to define who founded us. I cannot think of any other country or nation in the world that had to insert in its primary document, its social contract, that it was founded by so-and-so,

as if not stating that would somehow diminish the value of who we are. Is it that important, and will it not cause a definite feeling of two classes or more than one class of citizen in the country? If I am not a member of a founding nation as defined by the Constitution, do I therefore maintain an inferior position in our society?

Why is it necessary? I do not think it is historically accurate. I do not think any of us in the ethnocultural council think it is historically accurate. Why is it necessary for us to say who founded us? Founded in what way—by conquest, by settlement, by trade, by power, by financial power? I think it is a red herring, and I think if we really sincerely take a look at the concept of founding nations, we will see that it is discriminatory and adds nothing to our definition as Canadians.

Mr Harnick: I appreciate your answer and I think it is going to help this committee.

The Chair: I thank you very much for coming. We really appreciate the questions you have put to us, and the challenges also of dealing with this very important issue, and hope you will follow our work as we try to come forward with a final document in February.

Mr Malicki: Thank you.

The Chair: I would like to mention to the committee that there is just some nuts-and-bolts work that we need to do between 4:30 and 5 o'clock, when we have our next deputant come forward, so I will adjourn the meeting until 5 o'clock, but I would ask people to stay to speak about some of that nuts-and-bolts business.

The committee recessed at 1632.

1703

COMMITTEE OF PERSONS WITH DISABILITIES ON THE CONSTITUTION

The Chair: We are very pleased to have before us the Committee of Persons with Disabilities on the Constitution. You have been before us before and it is very good to have you back. I would like to welcome you all, particularly Angelo Nikias, the chairperson. He has been before many committees in this place and it is very good to have him before us again.

We have half an hour for the presentation. We hope you will leave a reasonable amount of time for us to ask questions. For the record, begin by introducing the people you have here today.

Ms Arsenault: I am Francine Arsenault. You have already met Angelo Nikias. With us are Hugh Scher and Joanne Doucette.

We thank you for the opportunity to speak today about these issues. Unquestionably, the issues we are about to discuss are the most important facing Canadians today. As you have mentioned, on August 1 of this year we appeared before your committee and put forward our views in relation to the Canadian Constitution. We indicated then that when the federal government made public its own constitutional proposals we would be interested in returning and sharing our view with you.

We have made an initial analysis of the two documents, *Shaping Canada's Future Together* and *Canadian*

Federalism and Economic Union, put forward by the federal government. Generally we are in agreement with the aspirations and values the federal government has professed to champion. We have concerns, however, as to whether the concrete changes proposed by the government are consistent with its professed goals. Below, we intend to touch on the reasons which give rise to our concerns. On a later date we would be prepared to further elaborate on these issues.

I will turn it over to Hugh.

Mr Scher: Paragraph 1 of the federal proposals refers to the reaffirmation of the charter. In the brief we submitted on August 1 we emphasized the urgent need to strengthen equality rights and protection for persons with disabilities specifically in the charter. We have resubmitted a copy of that brief in a slightly modified form.

In direct response to the Premier, we express our support in principle for the view that a social charter can be an important part of nation-building. While the Ontario discussion paper outlines interesting approaches concerning the content, entrenchment and implementation of the social charter, much work remains to be done to ensure that it puts into effect the actual values expressed within it. We agree especially with the affirmation of "our commitment to equalization and our knowledge that there can be no meaningful national standards without it." Being fully aware of the importance of this principle, we sought to emphasize it in our August 1 brief.

In that brief we also stated that "Ontarians with disabilities recognize the rights of the aboriginal peoples and the people of Quebec to self-government and self-determination respectively." We are pleased to see that these principles have been accepted by the federal government. However, we support the demand by the aboriginal peoples that the federal proposals should recognize their inherent right to self-government. We also generally support the explicit recognition of Quebec as a distinct society. We hope this recognition can be a basis for resolving the national unity question. Furthermore, we think this approach is more consistent with our own position, which celebrates our diversity. Indeed, treating everyone the same regardless of particular circumstances, as was noted quite often by Chief Justice Dickson, is not treating everyone equally and is often a way of perpetuating conditions of socioeconomic disadvantage.

While the government says it "reaffirms the basic rights set out in the charter as a fundamental feature of the Canadian Constitution," we are concerned that some of its specific proposals may in fact undermine the realization of these rights; for example, the proposal intended to entrench property rights within the charter. It is difficult to respond to this proposal without having specific wording, but we are concerned that if a general property right is entrenched, it will be used by powerful economic interests to challenge a wide range of social legislation and measures, including those beneficial to persons with disabilities. This will be especially true if the property right is framed so that it supports an unqualified right of freedom to contract. Commercial interests would inevitably lead to challenges of human rights legislation, labour and employment minimum standards, consumer protection and environmental laws, as well as other socially desirable interventions in the marketplace.

In relation to the override clause, section 33 of the charter, we think the federal proposal to require a 60% majority vote is a step in the right direction. However, we suggest that perhaps an even more stringent requirement, such as a two-thirds or 75% majority, would be appropriate as it would make its use possible only in truly compelling circumstances.

The proposed Canada clause in the federal proposal refers to "a commitment to fairness, openness and full participation in Canada's citizenship by all people, without regard to race, colour, creed, physical or mental disability or cultural background." We propose that this be strengthened by referring to the equality rights of these groups. We also support expanding this section to include other disadvantaged groups.

Ms Doucette: As people with disabilities have traditionally been excluded from political decision-making processes, we generally support measures designed to make our major political institutions more democratic, accessible and representative of all Canadians. Specifically, we support the proposal to allow more free votes in the House of Commons. This approach, we believe, can contribute to better laws and policies.

The proposed reform of the Senate is a move in the right direction, especially the position that Senators be elected. The questions of whether the Senate should consist of 50% women and equal provincial representation are still under discussion. While we have not yet reached a decision as to whether there should be equal provincial participation in the Senate, we support the position of the National Action Committee on the Status of Women that 50% of the Senate's seats should be designated for women. We also support the representation of aboriginal peoples in the Senate.

1710

With regard to the harmonization of economic policies, we well appreciate the need for greater co-ordination of fiscal policies between governments. We think, however, that this issue is best left to the usual political process and should not be constitutionalized. We are concerned that entrenching it in the Constitution will produce unnecessary inflexibility. It appears that paragraph 16 is intended to be integrated with paragraph 17; that is, reforms to the Bank of Canada. Making price stability the sole mandate of the Bank of Canada is, in our view, far too one-sided an approach. We recognize that fighting inflation is a genuine policy objective. Among other reasons, low inflation is necessary to protect the purchasing power of fixed incomes on which many persons with disabilities rely.

We are concerned, however, that removing the policy option of stimulating the economy to achieve higher levels of job creation will hurt our constituency even more, as it would make lowering of the high unemployment rate among persons with disabilities even more difficult. Furthermore, the combined effects of paragraphs 16 and 17 will unduly limit the options of governments in designing their budgets. The two proposals together introduce a strong element of inflexibility into the economic policy area. This does not belong to the Constitution, but should be left to the political circumstances prevalent at any given

time. Deficit financing, though not desirable, may sometimes be required.

We have specific concerns about the federal-provincial immigration agreements contemplated by proposal 19. As current immigration policy has tended to discriminate against persons with disabilities, we suggest the proposed agreements be clearly subject to the charter. This, we hope, may minimize the danger of discrimination against a person with a disability seeking to immigrate to or relocate within Canada.

We are concerned that the combined effects of paragraph 22, residual power; paragraph 23, removal of federal declaratory power, and paragraph 24, explicit recognition of areas of provincial jurisdiction, may erode the cohesiveness of the national fabric in ways that are not clearly understood at present, with unacceptable results.

Mr Scher: We will next consider paragraph 25, dealing with legislative delegation. A bit of a history: Administrative delegation is one of the tools currently employed by governments to facilitate a greater rationalization and harmonization of programs. Its use in this classical form entails the delegation of powers from either a provincial or federal government to a third-party administrative board or agency, usually created by that government.

These arrangements promote administrative efficiency without blurring the line of democratic accountability. We recognize, however, that the Supreme Court of Canada, in *Coughlin v Ontario Highway Transport Board*, extended this power to include administrative interdelegation. In this case the court allowed the federal government to delegate its regulatory authority over extraprovincial buses. This was a federal matter and it was allowed to be regulated by provincial motor carrier boards. This kind of interdelegation of powers has created several problems for persons with disabilities which I will now outline.

The proposed legislative interdelegation involves the delegation of federal powers to a provincial Legislature or from a provincial Legislature to the federal Parliament. The Supreme Court of Canada, in the Nova Scotia interdelegation case, strictly prohibited this kind of interdelegation without an express constitutional amendment, claiming that it would "disturb the scheme of distribution of powers within the Constitution." What the current federal proposal would attempt to do is overrule the Nova Scotia interdelegation case. Persons with disabilities have some specific concerns related to this.

We fear that the political responsibility and accountability of our institutions will become increasingly confused if governments are allowed to delegate powers on an ad hoc basis. We fear and feel that it would undoubtedly facilitate buck-passing between the two levels of government and would diminish the likelihood of achieving legislated access standards that are comparable between provinces. We feel it could possibly even lead to the complete abdication of legislative responsibility over access standards. The federal delegation of powers to the provinces unaccompanied by the necessary tax revenues to pay for the required administration and services associated with those powers could also potentially increase regional disparity.

Finally, once a power became constitutionally delegated to the other level of government and the bureaucracy was in place and the administrative powers were there, it would be extremely difficult, if not impossible, for that power to be revoked by the level of government that delegated it. Consequently the delegation would effectively constitute a constitutional amendment to the division of powers, while avoiding the formal amending procedures.

The division of powers contained in a Constitution for the people of Canada should not be shuffled like a deck of cards at the whim of governments without regard to the interests of individual Canadians or the concerns of persons with disabilities. For example, we point out that the government's proposal to delegate jurisdiction over ferry services to the provinces could detrimentally affect persons with disabilities if access standards get lost in the shuffle of jurisdictions. This was the case with access standards for interprovincial bus transportation following the adoption of the federal Motor Vehicle Transport Act. This act, of course, was upheld in the Coughlin case, which I outlined earlier.

One answer to the concern about interdelegation would be the outright rejection of the constitutionalization of this legislative delegation and the prohibition of administrative interdelegation, which is currently allowed in our federal system. At a minimum, however, we suggest that strict scrutiny be applied to the delegation of powers and its effect on matters such as access standards, those which have traditionally fallen through the legislative cracks, and that these should be monitored, either by the Council of the Federation or the reformed Senate. We further suggest that a mandatory review of the delegated power after five years might help to ensure that these matters are addressed.

Paragraph 28 deals with the Council of the Federation. At first glance the proposed Council of the Federation appears to be introducing a new level of government. While the council may fulfil a much-needed co-ordinating function, it constitutes a move towards stronger practices characteristic of executive federalism. We are concerned about this for these reasons: First of all, it tends to exclude from the decision-making processes people as a whole, but specifically it appears to seek to strengthen the role of the executive arm of governments and exclude or minimize the role of the federal Parliament and the provincial legislatures. We would suggest, therefore, that if the Council of the Federation is indeed deemed a necessary new institution for the better government of Canada, specific measures be built into its design to counteract the above-expressed fears.

Mr Nikias: In conclusion, I would like to say that the brief is necessarily brief because we do not have the resources to carry out a lot of analysis. Also, we did not have enough time to actually address all the points.

I want to make sure it is clear to you that we have attached the brief we submitted on August 1. That is important, because in that brief we focused on issues which concern persons with disabilities. We had put forward two proposals, one relating to the strengthening of section 15, the equality section in the Charter of Rights and Freedoms, and another concerning the establishment of a barrier-removal review process every four years. We still think

that those proposals, as far as disability is concerned, are appropriate, and we want to make sure you understand that the two briefs go together.

There is one further point that I want to address, and that is the question of somehow ensuring that the protection of the communication rights of deaf persons in section 14 of the charter be actually implemented. We are still studying ways of putting a proposal forward, and we hope that in the near future we will be able to submit another written brief. I do not think we want to come back here necessarily, but we would like the committee to accept a further brief, in which we will elaborate on some of these issues.

The Chair: I want to thank you for a very comprehensive and very clear delineation of many of the issues. What was particularly helpful to this committee was your writing specifically to the federal paper. I must say that I certainly appreciated your presentation. We will move now to Mr Harnick.

Mr Harnick: My question is related to your discussion of property rights on page 3. I agree with the analysis you have set out there. The question I have is whether you believe there is any way to have a property rights clause entrenched in the Constitution that will protect against the issues you have outlined.

1720

Mr Nikias: Our thinking has been that property rights, generally speaking, have not been threatened, especially the property rights of the institutions and people that we think the federal proposal is addressing itself to. If there is need for the protection of property rights of the weaker members of our society, then it should be up to the federal government to define that more specifically, and then it is a different matter. But the way it looks now, especially as proposed in the Charter of Rights and Freedoms, I would say it is suspect. On that basis we have opposed it. I do not know that property rights are threatened. Whose property rights are threatened?

Mr Harnick: I agree with you. I do not quarrel with that at all. I agree with the position you have taken. What I am wondering is if you have done any work in terms of looking at the idea of property rights in a way that narrows the definition specifically in a way that would protect property in its intrinsic form.

Mr Scher: There are a couple of points I could perhaps direct to that. First of all, the issue of property rights is seen as being quite broad. One way that might be addressed is by changing the concept of property rights to something like legal entitlements. In addition, the American experience might be looked at whereby expropriation of public property with due compensation is the model. However, we have to reiterate our tremendous fear that the entrenchment of a general property right or even of a property right that is vaguely defined could have serious negative ramifications for persons with disabilities. For this reason, without specific wording, there is very little chance that we could adopt and support such a clause.

Mr Harnick: I appreciate your insight into this area, because we have not had it to date. So this will be very helpful.

Mr Malkowski: A tremendous presentation. It was very good. I have two questions I would like to address to you if you could clarify for me how this would work. First, section 15: Do you feel that section 15 does not provide enough protection to persons with disabilities, and how could you improve that? In which way would you improve it? Would that be limited to distinct groups in section 15, or would you have any recommendations on that?

My second question would be related to the barrier removal process. Would we have to have a review for that every four years? Would you require that to be entrenched in the Constitution or would that be done by legislative assemblies across the country? How would you do that to make sure that barriers are removed? Where would you put that and who would have the authority to make sure that it gets done? Who would end up with that responsibility?

Mr Nikias: First of all, both of these proposals are addressed in the August 1 brief. I urge the members again to look at it very carefully. We have actually proposed specific organs, which I think not many groups have done yet.

Section 15 should not be a problem, but it has been a problem. There have been interpretations, and we fear more interpretations, which in a way subvert the purpose of the affirmative action concept and basically say that as long as a program or a policy can be defined as an affirmative action, it does not have to meet high standards of equality. We have provided specific cases, citations, in our brief, which should be able to help you in further thinking about this. So section 15 has to be addressed. Hugh, do you also want to say something about it?

Mr Scher: Yes, I would address that. One of the main problems we are facing with regard to the interpretation of subsections 15(2) or 13(1) in the parallel human rights codes is that the intention has been the interpretation of the word "object." One of the problems we are facing is claims of reverse discrimination. These problems could be addressed, first of all, by ensuring that only members of disadvantaged groups are able to avail themselves of the protection of the non-discrimination clause, which was originally its intent. That is what we propose through an amendment to subsection 15(2) of the charter. This is again a constitutionalization of the Supreme Court of Canada's interpretation in cases such as Andrews and Turpin.

Further, there is the second option which we have put forward which would allow for an interpretative clause or a set of interpretative clauses to aid the courts in interpreting section 15 of the charter. This would, in our belief, prevent the sorts of problems that have been faced by persons with disabilities as they pertain to the affirmative action clauses within the Constitution. These are outlined on page 4 of the brief submitted in August 1. The modified form addresses a new addition to that, the proposed interpretative clause I mentioned, and I would urge you to please look at that if you are searching for words that will address that problem.

I would like to thank you for asking that question, because one of our greatest concerns is that the issues of equality rights and subsection 15(2) and the idea of a barrier review process will be swept aside. As constitutional

negotiations progress and the fear and the requirement of coming to an agreement and recognizing Quebec's distinct society and aboriginal self-government come to the centre in constitutional negotiations, we fear that our interests are going to be overlooked. We believe they can be addressed in a substantive way without adversely affecting the interests of those who are seeking other constitutional protections.

Mr Nikias: I also wanted to say something about your second question, the proposal we have made that we include in the Constitution a barrier removal review process. The premise behind this proposal is basically that the participation of persons with disabilities in the social mainstream is the desirable goal, but it is also prevented by a number of barriers. These barriers are definable at any given time, but they change, and the solutions also change. As technology and other social research improves, the solutions to problems we face become, we think, easier. Also various concepts of what the solution is actually change.

What we are proposing here is that we do not try to resolve everything at once, but that all governments be mandated in the Constitution to look every so often—every four years in our proposal—at what measures they are taking to enable persons with disabilities to participate in society more fully. I think the beauty of this proposal is that it is flexible, that it does not commit anyone to something very specific right now, but it puts into the Constitution a process that will keep governments aware of this issue and that will also enable the disabled community to mobilize from time to time, examine what problems remain, think about solutions and advocate in order to achieve those solutions.

Mrs Y. O'Neill: If you listened on Monday night, you realized we had quite an interesting discussion here between the federal committee and our own. The first item on the agenda in many people's minds at that meeting was Senate reform. You have talked to that item on page 4. It is kind of difficult—and I would like you to try to think through this with me—to really hear what you are saying or read what you are saying because you, like I think all Ontarians we have spoken to, do not like the status quo. You do like the word "elected," but the word "elected" carries with it many complexities, as we know. In your next phrase, you talk about 50% for women and you talk about respecting the representation of aboriginal peoples. The equal Senate at the moment, in most people's minds, means equal representation by provinces, whatever and however that would spin out. You seem to be throwing in another mix, which would be guaranteed representation, and I am wondering how you feel we as a committee can read what I am seeing as somewhat confused and, if not, perhaps conflicting concepts.

1730

Mr Nikias: I am not sure what the confusion is. We have said very clearly we do not take a position on the question of equal representation by provinces. What we are doing is supporting the position put forward by the National Action Committee on the Status of Women that 50% of the seats in whatever arrangement, whether it is equal or equitable, be reserved for women. There is nothing

more to that and we cannot really elaborate any more on that right now.

Mrs Y. O'Neill: You say you are supporting aboriginal peoples, because at the moment the federal proposal guarantees representation, or it is certainly one of the strong suggestions.

Mr Nikias: Suggestions.

Mrs Y. O'Neill: You are suggesting that we now go also to guaranteed representation for women.

Mr Nikias: That is the position we are supporting, yes.

Mrs Mathysen: I would like to thank you for a very succinct brief. I think it is going to help us a great deal.

My question comes from your reference to the issue of free votes. This is something we grappled with at our conference here in Toronto two weeks ago. There were issues raised then and I will mention them now and perhaps you could help me with some of those.

The proponents of a free vote that would allow MPs or MPPs to reflect what their constituents are telling them is generally perceived to be more democratic. My problem is that I represent about 70,000 people, and even at the best of times I cannot hope to be in touch with them. I can only hear from or talk to a fraction of that group. People have good intentions, but they just never get around to writing that letter.

My concern is that while providing for free votes is on the surface apparently more democratic, the reality is that it may not be. Do my constituents have that right to expect me to exercise my judgement on their behalf? Can you help me with this? I am grappling with this and trying to understand how we can utilize free votes and whether they really will give that extra democratic feel to a legislature.

Mr Nikias: A free vote, the way we think about it, would not prevent you from exercising your judgement on behalf of your constituents. You will still have to decide how you vote. Most of the time you will probably vote with the party you were elected from. I do not think that is a problem. You will still vote as you choose, as to how you perceive the policy to serve your constituents or the nation or the province.

Mr Scher: Additionally, right now Canada has one of the strictest party discipline systems in the world. What a free vote system on certain matters would allow for is greater flexibility among backbench members, among those members who are not part of the inner circle of cabinet, to have a greater say in what the policies of the government actually are. Through representing their constituencies and their constituents through their own beliefs, in that sense I believe it will provide for greater democratization of our system.

Mrs Mathysen: So you would suggest looking at the free vote on issues, rather than the general principle?

Mr Nikias: That is right. It is not our intention on budget matters, for example, that there should be a free vote.

Mrs Mathysen: I think Mr Laughren would concur.

Ms Doucette: An example that immediately springs to my mind is the act Lynn McDonald put through the House of Commons on smoking, which was very beneficial to all our members. Many would not agree with it, but for many disabled people that was a very beneficial bill. Of course, I am speaking as an asthmatic, so I have a definite bias. But definitely we would not consider it on something like national defence or the economy.

The Chair: The last questioner is Ms Carter. We are really out of time, but you are on the list.

Ms Carter: This is really more a comment than a question. I find this a very impressive presentation, and I am particularly interested in your page 5, dealing with paragraph 16 and 17.

You make several points there which are excellent and which are not ones we have heard much or said much about; for example, the danger of co-ordinating fiscal policies between governments too much and losing some of the flexibility which our democracy as such gives us. After all, the difference between provinces at any one time is connected with how the vote went in the last elections they had, and I think that is something we should be aware of. There are also your comments about price stability, which has good things about it but also dangers connected with it—I think those are very real—and the effect it might have on employment. All these points are not just good for you as a group but good for all of us. Your approach does seem to be a very fruitful one that, as I say, is probably going to be good for most Canadians, not just people with disabilities.

The comment about the limit of options of governments in signing their budgets I think is correct and is a very real danger. You comment that sometimes deficit financing is required, as we had in Ontario this year, as we all know, and the possibility for flexibility in these areas should be maintained. I am really happy to see these. I do not know whether you have any further comments on it.

Mr Nikias: Only that when I was writing that part, I kept thinking, how can you ideologize the Constitution so much? It is really incredible that they would try to take one policy option of many and put it in there for 50 years. We have no problem disagreeing with it.

The Chair: I want to thank you all again for very fine work, comprehensive and stated with a great deal of clarity, which makes our job that much easier as we try to address these issues. I hope you will continue to look at how our committee is dealing with these issues. Our final report, we hope, will be out February 5; we have a number of things we are going to be doing before that time. I look forward to the continuation of the dialogue.

I now adjourn our committee meeting until 7 o'clock, and please be prompt.

The committee recessed at 1739.

EVENING SITTING

The committee resumed at 1905.

CHIEFS OF ONTARIO
TEME-AUGAMA ANISHNABAI

The Chair: I would like to call this meeting of the select committee on Ontario in Confederation to order. It is my very great pleasure to welcome again to this committee and, of course, to the Legislature, Chief Gordon Peters from the Chiefs of Ontario, and also Chief Gary Potts from the Teme-Augama Anishnabai. It is a great pleasure and privilege to have you both before us. We look forward this evening to be able to hear what you have to say as regards the federal document, and also to have, I hope, some time to pose some questions on the comments you make to the committee.

Mr Peters: Thank you, Mr Chairman. Good evening, ladies and gentlemen. Just to share some of our analysis and our comments regarding the constitutional document on behalf of our communities and our leadership, we have had the opportunity to go through it a number of times. We have had internal discussions with ourselves and, to put it in the context of where we are in relationship to our drive for the inherent right in the implementation process and the constitutional conferences, we are back with this federal policy prior to 1982 when we first saw the proposals that were being brought out in the first rounds of discussion on the Constitution.

I say this because of a number of reasons. I guess the changing times have seen a number of elements change and what we are now dealing with are those changing items. In 1987, when we ended the first ministers' conference, what we were dealing with over the number of years was a notion that for some reason we as a people can fail to continue to exist, that we had somehow become Canadian citizens and any identity we had, had been lost.

Very quickly, to capsule the number of years we were involved in the first ministers' conferences, I think we went from a discussion with the former Prime Minister, Pierre Elliott Trudeau, who said to us in the early rounds, "Self-government is a non-starter; don't even talk to us about it because it is not an issue that is going to be dealt with," and we went ahead in 1983 and we brought our proposals to the table and we dealt with them.

We had a couple of amendments that were dealt with in that particular year, one in particular that very few people have acknowledged but one that is very critical to us. It said that we were eliminating the process of identifying and defining our rights, that the process we were involved in and the constitutional discussions on the implementation of our rights were already embodied in section 35 of the Constitution, and those rights we were talking about were the existing rights that we had as a people from time immemorial, that were given to us by the Creator and by our occupancy of the land.

In the subsequent sessions we had, self-government became an issue, and the buzzword was "self-government." We continue to remind people that this was a buzzword that was being created by the federal government. We were

still talking about our own jurisdiction and our own ability to govern ourselves and our governments, not the identification of a self-government that was going to be granted to us or given to us.

In 1985, we saw the change of government. In our conference in 1984, we had gone from talking about our right to govern ourselves, but with the addition of saying the jurisdiction we were talking about, that we had not given up our sovereignty as a people and that still existed.

Again in 1985, we were told not to use those words by the Prime Minister, the incumbent, and he said to us that talking about sovereignty was something we could not deal with. But again, we continued to talk about sovereignty at the table. We walked away in 1985 with no agreement. Subsequently, we were able to build the aboriginal wall and we were able to walk away from the conference in 1987.

Most people said the conference failed, that we as aboriginal people could not come to terms with the proposals that were being given to us. From our perspective, it was a major victory on our part, being able to walk away from that constitutional conference in 1987, because it kept our integrity as a people intact and it made it very clear not only to the government of Canada but to the citizens of Canada as well that we were embarking on a process that was going to be much different than in previous years. We were talking about jurisdiction; we were talking about the re-establishment of our nationhood. Those elements we were talking about had not been given up by consent, and there was an illegal occupation of our territories, an illegal usurpation of our jurisdiction and our territories. Our whole ability even to define for ourselves who we were as a people and our citizenship had been removed from us through the Indian Act, and those things were going to change.

From those number of conferences, I think it is clear to point out there was no process that was involved from conference to conference. We heartily rushed to try to find some ways to put things into place three or four months before each conference, and that process did not work.

In 1987, we left there with a very strong feeling that we were going to implement our rights. That year we called upon our people and we said we now had to begin the process of exercising our rights. We knew very clearly that meant we were going to come into conflict with federal and provincial governments and enforcement agencies across the land, but we also wanted to demonstrate that we were going to control the agenda from our side of what we wanted to do. The implementation process started to exercise our rights. I guess the exercise of that right is ongoing to this day, and the culmination of that resulted in the confrontation in Kanasatake and Oka last summer.

Right now that same denial is still in place. We see that from the federal government, and the elements that have changed have only made us conclude that the proposal is being updated in compliance with some of the Supreme Court decisions that have been made, in particular Sparrow. The proposition we dealt with up till 1987 was that there were no rights in the Constitution in section 35. The

court said there were, in fact, rights in section 35. That is what, in our minds, precipitates the change now in the federal proposal and them being able to say, "Yes, now we're talking about the general right to be able to govern yourselves."

One of the things we are trying to stress to people is that because the times have changed, it does not mean our perspective of who we are has changed and that the direction we are travelling in has been altered in any way. We are still saying the same things we said during the 1980s. The only difference we have before us right now is the fact that we have one government that has formally recognized that the inherent right does exist and that there is a process of implementation, and that is here in the province of Ontario.

We do have difficulties yet with the understanding that we are talking about in terms of our inherent right. I guess that is something we will continue to have problems with until our education systems are able to work collectively with each other and people have a general understanding of what we are as a people.

The general right of self-government with preconditions is not something that we are amenable to. It is something that our people have rejected right across the board, not only in Ontario but Canada as well. Saying that, the other two particular items that come under that general right, the Charter of Rights and Freedoms and laws of federal and provincial general application, are also items that we have to make statements on, saying that they are not preconditions that can be put against us in any form because they are already an intrusion into the inherent right for us to be able to govern ourselves in the manner we so choose.

The Charter of Rights and Freedoms is something we have said in the past that we could negotiate and that we were willing to deal with in some manner, but we have to make it clear that first and foremost, before we begin to talk about individual rights under the charter, section 25 cannot be bypassed in the Constitution. That protects the collective rights we have as the first nations and that was built into the constitutional process explicitly for our collective protection. We think right now that when you begin to talk about the charter and laws of general application you have already gone past those provisions in the Constitution; there is a violation of the constitutional provisions again already before we get to the table.

We are certainly amenable to this forum of addressing the inherent right and the process that, I guess, could be almost said to be one of the models that we currently have in Ontario as a substitute for what is being offered in the federal proposal. Beyond that, we also have concerns in a lot of the areas we are dealing with, and the question of our being able to go to courts to enforce our right is something that we have said in the past has to be there. We need the enforceability in order to give us that protection so our rights do not get overriden by federal and provincial legislation.

There are other areas that need to be addressed. It is difficult for us to get into the internal aspects of addressing those items because the very basic premise of the proposal is wrong. If the premise is wrong, for us to begin to discuss the internal aspects of the rest of the proposal—we do not want to get sidetracked and begin to start talking about issues like the Canada clause and how that is going to

work without having to deal with the premise. We know that we will have to deal with some of those items internally, but we do not think it is part of the negotiation process at this particular time.

Another area where we wanted to ensure that people understood us was in terms of the economy. When we talk about the inherent right, we are talking about the right to have a land base that is sufficient for us to be able to support our governments and we are talking about access to our own resources. We do not think that we can be left out of any discussions that deal with the economy. The Council of the Federation, as it begins to deal with the economy in the existing system in Canada, is one place that cannot move without our participation as well, because those areas outline very clearly how governments are going to relate to each other on the economic basis.

I guess I am trying to explain this to you without getting into a hard and fast position of where we are at. It is safe to say that we are having to look at those, because we are beyond the situation of the 1980s where we only addressed aboriginal treaty rights as the one area that was allotted to us to be able to deal with. But if we are going to talk about Canada as a whole, we need to talk about Canada as a whole and about where our place is going to be. It becomes a necessity, I guess, through just the general procedures to be able to discuss those.

1920

Another item I think we have basically come to terms with is the whole question of aboriginal representation in the Senate. We have said it in the past and we continue to say that your governments are run the way you want to run those governments, we will run our governments the way we run our governments, and we need those places of arrangements of how we are going to deal with the jurisdictional questions. We do not need that kind of participation within the process, because we see it as the vehicle to be able to deal with our rights and our jurisdictions and only have us outvoted in the process—basically, the right to say no.

I guess that is in line with the constitutional process in the 1980s, when we were told very clearly that the only right we had in the Constitution was the right to surrender. Those two things to us are part of that surrendering process the federal proposal sees as part of what they think is good for us. The same colonial mentality is there, the same kind of process is there, and I think from our point of view, in our discussions in the last two days among ourselves, we are basically starting from scratch in terms of developing what would be an appropriate constitutional package for us. We are hoping the provincial government can be involved in this process. To date, we have not had that kind of mechanism to be able to get involved directly in that development, but the proposal for those roundtable discussions is there.

I know there are a lot of other areas the federal document talks about, and I will leave it at that, because I think it is better that we engage in a dialogue on some of the issues. I will ask Gary if he wants to make any comments at the outset and then we will be open to questions and answers.

Mr Potts: No, I have nothing to add.

The Chair: Thank you both very much. Mindful that we have with us as a member of the committee Mr Winninger, who is also the parliamentary assistant to the minister responsible for native affairs, I was wondering if perhaps you would like to start us off tonight.

Mr Winninger: This may be more of a comment than a question, actually. There are some people who suggest that native people might only have an interest in native issues outlined in the federal proposal. Is it not true, though, and I think you have suggested it tonight, that your interests go far beyond the narrow definition of native interests? Your interests are broad, because your concern is with how the future model for Confederation will affect you in every form of your lives and existence. Is that not why you are seeking to be intimately involved in all aspects of constitution-building, and not just the aboriginal issues?

Mr Potts: I would like to begin answering that in this manner: We are a people that has lived here for thousands of years and over those thousands of years were self-sufficient. The Teme-Augama Anishnabai required 4,000 square miles of land to be self-sufficient, and that evolved over those thousands of years over those 4,000 square miles of land.

We have campsites that are linked to our people living today that are buried under four feet of earth, and that earth grew from trees, bushes that grew and died on our lands. So our source of authority is the land, while your source of authority is the crown, and we feel that everything you are touching in your jurisdiction affects our land directly, affects the people who use our land directly and indirectly as well.

The vision we had when the settlers first came to our lands was that co-existence was the reality. We did not require the settlers coming to our lands, when we outnumbered the settlers and had quite a superior military capability to the colonial interests coming in, whether it be French or English—we did not demand that you learn to speak our language, dress like us, to live like us, before we considered you human beings.

Over the years we had to develop a leadership capability to deal with people who, when they became more numerous, had different visions of our land and developed laws that were being applied to our land and to us. We were not consulted on the development of those laws. The only time we were consulted was when the settler governments of the day required land to open up for sale to immigrants who were coming in from Europe. We were consulted at that point in time and treaties were made.

We find that there has been an incredible wall of ignorance, captured almost in a time capsule, because we have not been able to talk to each other. There have been no forums to talk to each other about how the country should be governed. In that process, what has been missed is the intimate knowledge we have of governance on this land with this land for thousands of years, and we feel that all elements of governance require our input, based on the reality of the all-encompassing, holistic view we hold of our place in the world.

To be relegated to an interest group in a dominant society now that is not fully aware of its own history of evolution in this country is offensive to us. We feel we can defend very adequately our legitimate right to be involved in all aspects of governance in this country.

Mr Winninger: Just one short, very practical supplementary, and that is, do you think self-government should be defined at this time?

Mr Potts: Both of us want to answer.

Mr Peters: I think we are in the process of defining that, but I do not think it should be defined in the constitutional context. Our definition is one that is evolving, and if you look at the federal document, it says we "had" existing societies. Our societies are still existing today. Our governments still exist today.

I guess for us that definition is going to come internally to our own people. It is not going to be something that is going to be set out as a model for one community or five communities. People have existing governments out there that have been there for thousands of years. Those are being revived and those are being strengthened in the way they are moving ahead.

I do not think there is any way those things can be defined, because I think what happens to us when we begin the definition process is that we begin to think all those governments we have and the jurisdictions we have and the capacities we have to govern ourselves are somehow static and they stop once that definition process comes into place. It is going to be an evolving process and it is going to be something that is going to continue to evolve. As long as we are living here together on this land, our governments are going to continue to evolve, to be shaped, to be formed, and there is not going to be one set definition you are going to have for our people.

1930

Mr Potts: In addition to what Gord is saying, your question highlights the difficulty we had in our dialogue in the 1980s. We were constantly being asked that same question and we were constantly trying to explain that if you look at the European continent, there are many different forms of governance there. You are involved with the same thing here when you look at the size of the Canadian continent. You ask us to define. To us, it was like stopping something that was living, because we were evolving all the time with the land. The land grows; we grow as well.

I finally figured out that the problem in this cross-cultural dialogue was that we were being put through the same process the colonies went through with Mother England: You had to jump through a certain number of hoops, and then they passed more power to the colony. Now we are expected to jump through the hoops of the federal government, and the federal government will pass more powers to us.

We are saying we have had these powers, and you are suppressing these powers. What we are talking about is an exercise to define how there will be a transition where you are going to end the persecution and suppression so that we can flourish again as peoples, and how this is all going to be integrated with the fabric of provincial authority and

federal authorities in the country. That is why this is a smothering question.

Mr Harnick: If we assume that a new Constitution recognizes the inherent right of aboriginal peoples to self-government, and that happens right away, what would effectively happen next?

Mr Peters: Nothing.

Mr Harnick: Let me make it a little more complicated for you then, Chief Peters. What would happen in Ontario and what would happen in terms of the Canadian perspective generally?

Mr Peters: I think what we have said, and we have said this many times, is that even if the Constitution recognized the inherent right tomorrow, you would not see a major change in society immediately. You would definitely see changes over a given period of time, but what we have been talking about is an orderly transition period so that, as we develop capacities and the capabilities to be able to deal with I guess the modernization of the world around us and make those decisions about how we are going to deal with that modernization, we would be moving those jurisdictions out of our territory.

I guess the other thing we put forward to people all the time is that, dealing with the inherent right, we are still talking about a negotiation process that has to go on. I do not think you have heard any of our leaders say: "Once the inherent right is recognized, we get all the land back; we get all the resources back. We're now going to push you off your homesteads. The towns aren't going to have any kind of control any more. We're going to move into those areas." I do not think that is what any of our people have ever said. We are talking about a transition process. That is why I say that I do not think you would see major changes tomorrow.

I think the experience is here right now in Ontario. I do not think you see dramatic changes. Last June we went through our assembly and we ratified the inherent right document, the Statement of Political Relationships, and I do not think you see a radical change in the fabric of Ontario at this point in time. Certainly we would like to see more changes. We have gone through a lot of talking, but the changes are not going to be the kind of rapid changes that people envision.

Mr Potts: I would like to add to what Gord is saying in this regard. You asked what would happen immediately. To us, what that would send out to our people is that it is the end of denial on the part of dominant society that we have even existed as a people. That would lift a huge darkness off of us, just that the spirit our ancestors showed of sharing, when we were in full control of these lands, and moving over to allow other people to live on the lands, has been acknowledged. It is still there, and our spirit of sharing is still there as well, but what it would mean is the end of the denial of us as a people who have governed ourselves for thousands of years. It is a linkage to that spirit of our ancestors that we can flourish in this country as indigenous people.

Mr Harnick: One of the things you said was that there would be a period of negotiation. I gather that would

be a period of negotiation between your governments and provincial governments and the federal government, and also among aboriginal peoples alone. That is the first half of my question.

The second half of my question is, what would be the immediate economic effect in terms of the relationship of aboriginal people to the existing provincial and federal governments after the inherent right to self-government was recognized?

Mr Peters: The negotiation process I talked about earlier would have to go. It would definitely be between ourselves and the federal government as a starting point in terms of clarifying how those things were going to be developed and worked out. It would have to entail the relationship based on treaties that we currently have that are recognized in the Constitution already. People are more than prepared to look at how those mechanisms would start unfolding.

The other part of it, in terms of the economics, if the inherent right was recognized, involves the obligations that rest now in the treaties and the responsibilities that the federal government has undertaken as our trustee in those particular areas. That is only one side of the equation. That is only dealing with the obligations that are there now.

The other side of the equation is our movement towards self-sufficiency and what that would mean for us. Obviously we are talking about more land. We are talking about the development of resources as a necessity for us to have a long-term economy that would be in our control.

You would not see, in my mind anyway, the economic scenario change dramatically, but it would be that evolution again. You would begin to see the economic scenario in our communities changing.

What would that mean to federal and provincial governments? We talked about the term "certainty" before. The federal government has said to us, to ensure certainty, the question of the land had to be dealt with. Hence the policies on land claims were brought forward, but to us that was not certainty. That was a certainty that we would never have an economy of our own and a land base of our own.

When you begin to look at our development, you had people in the conference last week explain that this would be in addition to the economy as a whole, because in terms of certainty, a lot of areas right now that have the potential for our development, that would be environmentally safe for us to be able to deal with, we would be in those areas of development. We would begin those areas of development.

The only thing I have heard from our people is that they want to be involved in those areas of development, but they want to make sure it is environmentally safe. They want to make sure their guardianship and stewardship over the land is such that they can leave the lands and the availability for the generations to come.

1940

Mrs Y. O'Neill: I want to thank both of you for the review you have given us tonight. You went back a long way. You brought it pretty close to the surface and pretty close to today and I thank you for that. I find your participation

is always serious and you express respect and patience, and those are qualities I admire.

I want to thank you in particular, Chief Peters, for what you did at the constitutional conference because there were moments that I felt you were much a peacemaker. That may have even been among some of the people you work with in other arenas. I really want to recognize that because I did see it.

Thank you tonight for being so clear about the Senate because, of course, other people who come before us make a lot of suggestions about that particular part of the proposal. It is nice to hear from you so clearly what you think about that. I thought it interesting. I have not of course had a chance to hear you comment on the Council of the Federation. I am glad you are discussing that as a viable option because it may be some new slate that we can start writing on all together, in equal position.

I have a couple of questions. My first is, when you came here before, you were about to begin some extraordinary, I suppose may be the word—or more natural for you but maybe from those of us who watch—a little more involvement of the women, the youth and the elders in the constitutional circles, I think you were calling them. Can you tell us if that worked and is it still working? Are you working with the federal proposals now in that arena?

Mr Peters: We have had a very positive summer in that respect. For the last couple of years we have been working on a number of things that are very important to our people and bringing our people together.

The other thing we have been working on is to say, let's start dealing with the things within our communities, that we do not need federal, provincial or constitutional amendments to deal with. We are strengthening ourselves and preparing ourselves as a people to move ahead in dealing with our own implementation process, so we do not get the backlash that there has been a failure if there is no constitutional amendment on the inherent right, that we do not have anything, that we are nothing again, as a people. That is a very integral part of our movement.

The other aspect is bringing our people together, which we have been working on for a couple of years. I am saying in a very positive, optimistic way that I think we have achieved that.

We now have sitting at our table our people who live in the urban areas; we have native women sitting at our table; we have the Friendship Centre sitting at our table. We are going through the process of understanding how those institutions get mandated, that the mandate for our people living in the urban areas has to come from our existing government, that people in the urban areas have to remember that they have roots, that there is a place where they belong.

The people who have come to our table have been very positive in that way and also remind us of some of the obligations, that we have to ensure we protect our citizens wherever they are and that there is an obligation on the part of our governments to do that.

The work is going on in a very intense way. We have decided among ourselves that we need to strengthen that relationship and we are doing it through a protocol. We acknowledge that the fundamental issue is our inherent

right, that the control and the jurisdictions over our lands, resources and our citizens is paramount, and that the treaties and the treaty-making process are part of our mechanism that we need to carry on our relationship.

It has been a very rewarding process we have been involved in because we even addressed some issues today dealing with finances and we walked away from those where, under normal conditions, I would say a year ago, that would have been something that would have divided us, would have split us, would have taken us back to the divisions that were there before. I think the discussions we had over the areas of money today strengthened us in our understanding that money is not an issue that is going to divide us any longer. Those areas are something we are going to set aside, and we as a people have to ensure that we are the only ones who can make this thing work and we are the only ones who are going to be responsible in the end.

That is the commitment we are making to each other now, and I feel very good that we are involved in this process.

Mrs Y. O'Neill: I am really happy to hear that. I mean that sincerely.

I would like you to comment as briefly as possible, if you could, on what the special joint committee is supposed to look at in the interests of your people; that is, the jurisdictions that your government would exercise. You have said a little bit about that. Could you be clearer so that we could understand, because people are certainly going to want to discuss this with us, and we no doubt will have to discuss it with the federal committee when we meet with them again. I just wonder if you could help us understand what, in your mind, that phrase means.

Mr Peters: We are just beginning to detail that work now about what we see as the vision of our existence here in interacting with the provincial government and the federal government on lands in Ontario.

First, when we talk about jurisdiction, it has to be clear that we are not talking about a derived jurisdiction from another government. I think people are fairly clear on that.

Second, we are not talking about the existing reserve system, because the existing reserve system does not facilitate any of the needs that we have when we are talking about the exercise of our jurisdiction.

We need to get involved in those kinds of discussions about how we are going to expand the land base, how we are going to expand our jurisdiction to those traditional areas, in that we need to be able to control those areas for our growth and our development. We also need to talk about areas of shared jurisdiction, and this is something that works two ways.

One, shared jurisdiction, because we are saying right now that there may be elements we can share, and from our perspective it would be elements that we would delegate to other governments. An example is a question that people commonly raise with us: How are you going to deal with murder in your communities and the federal Criminal Code? We are saying that until we are moving into those circles, perhaps that is a shared jurisdiction that we will have, that those things will still be utilized until the time

we are prepared to deal with them. That is one aspect of shared jurisdiction.

The other aspect is the treaty areas, for example. We are saying that in the implementation of treaty, there are going to be areas out there beyond our traditional lands that we are going to want to have a shared jurisdiction in so we are able to protect our interests in those surrounding areas. It is something that is a necessity for us so that we are able to deal with the management of the land, the stewardship of the land, in those particular areas. We will be working together to protect those areas and to make sure we have economies 50 years down the road and 100 years down the road.

The other area is the exclusive jurisdiction of the provincial government and the federal government. Those are areas that are going to be exclusive, where we would hope we would have some kind of mutual way of being able to at least address each other in terms of how those jurisdictions are going to be dealt with in dealing with controversial items. That is not to say that anybody is going to interfere with those areas of exclusive jurisdiction.

Mrs Y. O'Neill: I thank you very much for the leadership you have shown tonight. I wish you my very best wishes for next week in your important meetings.

1950

Mr Bisson: My first question was posed by Mr Winninger and my second question was posed by Mr Harnick. I reserve my questions for other members.

Mr Malkowski: That was a great presentation. When you take a look at the Canadian charter and the Constitution, clearly they have historically been a form of oppression because of course those are white laws which mirror white institutions, not native institutions. Would you like to see an amendment to that to include you or would you rather have something you could call your own? I do not know if you agree with section 25 of the Charter of Rights and Freedoms because, again, that is a white institution decided by white people. Would section 35 develop on its own or would native people need to be in control of that? Could you respond to some of those issues, please?

Mr Peters: I will take a whack at it and then let Gary take a whack at it. Section 25, which we were talking about, was a means of protecting our collectivity. You will find in our discussions and in dealing with our past traditions that we certainly do not define equality in the same way. There are a number of elements we see within our society and roles people have to play. We do not think there should be someone from another government trying to define what those equalities mean, trying to define for us what our own internal relations should be as peoples within our own nations.

The example that many people have used is that within our governments, when you talk about equality and the system of the clans that is there, that is a role reserved for the women of our communities, a very strong role where they put up the leaders based on merit, based on the fact that they have watched their children grow, based on the fact of how they demonstrate their goodness and willingness to participate, all those elements, qualities and characters.

They bring that to the table as their recommendation of who the leaders in the communities should be. If the charter were to apply to us, would that mean I would now have the right to be a clan mother and could seek a remedy in the judicial process to be guaranteed that I could be a clan mother? That is the best illustration I can think of right now that shows you the differences in terms of the application of individual rights.

Our charters are already there. The unfortunate part of it is that now, in order for us to have people understand us, those charters are going to have to be written and those laws we have in place that have been given to us from the Creator are going to have to be brought out in writing so that people will understand that there is not going to be anarchy in our communities and that we have ways of being able to deal with those things.

What we are saying is that these things are going to take time, because we have come to understand that the system we have is one of the individual having rights but not responsibilities. How we move back to ourselves again to implement those things we have within our governments that outline not only the rights we have but the responsibilities that go with those will take us some time, but that is our eventual goal and those are the things we are trying to get back to.

Maybe some of the things in your charter will find their way into some of the things we will be doing in our communities, but I do not see the application of the charter to our communities when we begin to talk about the capacity of our inherent right to be able to deal with our own laws and system.

Mr Potts: In addition to what Gord was saying, I think it is very important that we not be under any illusion that the Canadian constitutional process is meant for the citizens of Canada. We thought that when we first entered the process in the late 1970s and early 1980s. What we found was that the federal government and certain governments of the day were there to entrench their authority in the Constitution. They put in section 33 to override the citizens' rights in Canada. They tried to include our rights in section 25 in that Charter of Rights and said, "Your rights are protected." Time has revealed that they knew they could override those rights at any time. That is why they wanted it in there.

The other thing that became quite clear is that they pulled out section 34 and put it back in, calling it section 35 and saying that our rights were there, and put in the qualifying word "existing." That was another means to control the interpretation of what our rights were. Professor Brian Slattery has written an article, called *The Hidden Constitution*, on the essence of section 35. I do not know if you have become aware of or have that document in your possession. Brian Slattery is a professor at the University of Toronto and he would be more than happy to share that with you. He has been referred to on occasion by the Supreme Court of Canada as being one of the most knowledgeable people on native history in this country.

To illustrate why, say, it is a constitutional process only to further advance and entrench the powers as they evolved from Europe, you do not see the federal government

proposal, *Shaping Canada's Future Together*, saying to the citizens of Canada: "We've made mistakes since 1867. We started to get lost about 1895 and we're trying to recover some of the essence of the great country we have. In positive citizen forums that we are creating, we would like to put it to you, citizens of Canada, should we have provinces at all in Canada, or territories? Should we just have a generic federal government system and all of the municipalities linked in some way to this federal government system or should we eliminate the federal government and just have provinces, establish provinces that are based on watershed boundaries? We would end up with about 39 provinces in Canada. That will actually reflect the area of the country you live in; and in the provincial area you live in, this particular land mass, you will have a say in the generics of the country as well and the country will be aware of this particular watershed system you live on. Therefore, the motherland, Canada, as we are trying to grasp it, will have meaning from the ground up rather than from England down." This is what we think the federal government should have put forward.

We are talking about a people's Constitution. It is generically the same system. We cannot let these people do this on their own. Something might go wrong. We need to control the process. You will find that in the 11th hour, or maybe on the morning of the beginning of the conference, the federal government's agenda will be revealed. The draft amendments will be there for you to consider, and

nine premiers, if the federal government agrees, will pass law, make constitutional law. If seven premiers want to do it and the federal government says no, there will be no constitutional amendment.

If we are going to reshape Canada, we have to start from the ground up again in a transitional period—maybe 50 or 100 years, whatever is required, but we need the vision of Canada as citizens of Canada. It has a lot of positive things going for it. After all these years we still talk to each other about it. It is beautiful in that way, but the premise is wrong.

Mrs Mathysen: In view of the lateness of the hour, Mr Chair, I will forgo. Chief Potts has touched on the things I wanted to know. I thank him for that.

The Chair: I want to thank you both very much for coming before our committee. Many things have been said tonight, Chief Peters, about your role at the conference. I want to give you my thanks as well because we were very conscious of trying to have as open a process as possible. By having you there speaking passionately about the things you believe in, you were able to help us to see much more clearly, in that kind of forum, the importance of the things you hold near and dear to your heart. It was a very important experience for all of us. I thank you for that and I hope we will continue the dialogue through all of these negotiations and have a chance to talk again.

The committee adjourned at 2002.

CONTENTS

Wednesday 30 October 1991

Ontario Federation of Students	C-1501
Canadian Ethnocultural Council	C-1505
Committee of Persons with Disabilities on the Constitution	C-1509
Chiefs of Ontario; Teme-Augama Anishnabai	C-1514

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First Session, 35th Parliament

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Wednesday 6 November 1991

Select committee on
Ontario in Confederation

Assemblée législative de l'Ontario

Première session, 35^e législature

Journal des débats (Hansard)

Le mercredi 6 novembre 1991

Comité spécial sur le rôle de
l'Ontario au sein de
la Confédération

Acting Chair: Dennis Drainville
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Président suppléant : Dennis Drainville
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Table of Contents

Table of Contents for proceedings reported in this issue appears at the back, together with a list of committee members and other members taking part.

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Table des matières

La table des matières des séances rapportées dans ce numéro se trouve à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et des autres députés ayant participé.

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au (416) 325-7400.

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

Wednesday 6 November 1991

The committee met at 1600 in room 151.

ONTARIO ARTS COUNCIL

The Chair: I call the Ontario Arts Council, Nalini Stewart. I am very glad to have you before us. First, I wonder if you could introduce the people who are with you. Second, we have about half an hour of time. If we could have perhaps 15 minutes for a presentation and 15 minutes for questions, that would work quite well.

Ms Stewart: I will start with introducing Yolande Grisé, the chair-elect of the Ontario Arts Council; Norm Walford, the executive director, and Gwenlyn Setterfield, director of developmental ventures.

Thank you so much for inviting us to be here today. I would like to start by commending the select committee on Ontario in Confederation for being so prompt with its report of March 1991. I am really delighted that you are showing leadership in identifying and promoting a national vision for Canada. As somebody of Indian origin living in Canada, I really cannot think of anything that is more important at this time, along with our economy.

We have read your report carefully. In terms of the content and feeling of the report, I feel very much at home with it, because that is very much how we feel at the Ontario Arts Council. I am very pleased that you have given us an opportunity to come here.

I have been with the Ontario Arts Council for almost six years. Yolande will be taking over from me in a few weeks. I have always thought of the Ontario Arts Council as a mini-Canada or mini-Ontario. There is a 12-person volunteer board and a small staff of less than 80 people, but within our organization we have been dealing with all the problems you are dealing with in your report today.

For example, we have had a Franco-Ontarian office in our organization for about 20 years now. We have special programs for peoples of the first nations community. In the last six years—it really started before I came, but certainly in my time there we have focused on how to bring into the Ontario Arts Council all the different cultural voices that make up Ontario today. So we have looked at fairness and excellence in all our programs. We reach over 1,000 organizations all over Ontario, from north to south and east to west, and we give grants to over 2,000 individual artists.

I say all this to show you that we are doing in our organization what you are looking at. We have been looking at it in different ways for over 20 years for Franco-Ontarians, almost 20 years for first nations programs and maybe the last 10 years for cultural diversity programs.

We have also been monitoring the constitutional debate since Meech Lake and we have been very concerned about the unclear messages that have been coming out about federal funding for culture and how it is going to be allocated.

Late last spring, we assigned Gwenlyn Setterfield to start gathering information about devolution. We invited the board of the Canada Council to come and speak to our board and staff in September, to get its perspective. Our clients, who are the artists and arts organizations of Ontario, are deeply affected every time the Canada Council is either straight-lined or has a cutback. I might add that over 50% of the artists of Canada live in Ontario, whether they are writers, film makers, painters or musicians.

Norm and Gwen recently went to a concert in Ottawa where they talked with provincial representatives of arts councils in different provinces and with representatives from the Canada Council. They have also been working with provincial and national art service organizations. After getting input from all these groups, our board, at its meeting a week ago, passed the statement you have in your package. I would like to just highlight a few of the areas and then we can answer questions.

First, we would like to say that we reaffirm absolutely our commitment to the principle of arm's-length funding in the cultural sector, in order to allow artists a strong voice independent of political pressure. We do have three areas of concern. This is the statement I am referring to, right at the top of your package. It is called The Ontario Arts Council Position on Federal Constitutional Proposals.

We are concerned about the lack of definitional clarity as to the federal government's ultimate role and responsibility in cultural matters in a revamped constitutional framework. We were not sure how the federal government is to maintain responsibility over existing Canadian institutions while at the same time inviting provinces to negotiate cultural and other agreements.

The next thing is the call of the federal government to negotiate cultural agreements with each province. We talked a lot about bilateral negotiations at our board level. Bilateral negotiations could lead to a fragmented cultural sector. We know the reality of Canada, because our organization has been dealing with the reality of Canada, so we do not seek that everybody should be exactly the same and we are not looking for a homogeneous culture.

Through our own programs and policies we recognize the unique cultural needs of francophones and native peoples. Similarly, we believe it is possible within a new constitutional framework to recognize the distinct cultural aspirations of the province of Quebec and the native peoples of Canada while retaining a strong national cultural identity. We are worried about the effects of bilateral cultural agreements on the current multilevel system of arts funding.

A devolution of federal support to the provincial level goes counter to the principle of shared funding. The latter has served the needs of Canada's artists well. Shared funding should instead be strengthened to ensure access by all Canadians to participation in Canada's artistic life.

In your report you mention national institutions. We feel strongly that national institutions such as the Canada Council, CBC, Telefilm or the National Film Board are necessary to have a national vision.

We also feel strongly that the artist's voice must be heard in this present debate over Canada and we urge to you include that voice whenever you can.

Norm, would you like to add something?

Mr Walford: I think our chair has said most of what I would say, except to emphasize that in all of this dealing on the cultural front, Ontario has—as I suspect it does in many other areas, but in this one in particular—a very prominent role because of the disproportionate weighting of artists and arts organizations of a national character resident in this province. If we are counting gains and losses over the constitutional process, this is one area where we should be very careful, because I think Ontario itself will stand to lose if there is any kind of agreement which does not recognize that fact.

Ms Stewart: Gwen, would you like to add something?

Ms Setterfield: No, I think I would just like to hear any questions from the committee members.

Ms Stewart: Yolande?

Mme Grisé : Oui, j'aimerais ajouter, par intérim, à ce que notre présidente actuelle vient de dire : que notre pays souffre en ce moment d'un manque d'identification culturelle très fort. C'est peut-être une des raisons pour lesquelles de l'ouest à l'est, du nord au sud du pays, on ne sent pas cette identité canadienne de la même façon.

Aussi, le point que j'aimerais ajouter c'est de comprendre que, par ces temps de récession économique très difficiles, il me semble que le Canada devrait accorder une large place aux artistes dans ce débat constitutionnel pour trois raisons :

La première, c'est que les artistes ont l'habitude de faire face à la récession tous les jours de leur vie, et ils ont sans doute des moyens à nous apprendre comment trouver de nouvelles méthodes pour vivre de façon différente dans ce pays.

La deuxième raison, c'est que les artistes sont des créateurs ; ils ont un sens de la créativité dont nous avons besoin actuellement pour faire face aux enjeux, à l'excellence, au défi international qui se pose à notre pays.

Enfin, la troisième raison pour laquelle nous devons faire une large place aux artistes dans ce pays, c'est que les artistes sont une source d'énergie dont nous avons besoin pour nous renouveler, et en particulier dans le domaine de la constitution.

C'est un peu ce que je voulais faire entendre à votre commission, comme présidente désignée du Conseil des Arts de l'Ontario. Je vous remercie de votre attention.

1610

M. Bisson : Vous avez parlé de l'importance de faire sûr que nos artistes sont représentés dans le débat constitutionnel. Qu'avez-vous à dire à ceux dans la société qui disent : «Écoute, la table est seulement si grande. On ne peut pas mettre tout autour ; on ne peut pas y mettre tous les représentants de toutes les communautés de notre pays.» Comment est-ce que vous répondez à ça?

Mme Grisé : Je pense que les artistes sont le fer de lance de l'identité culturelle d'un pays. Bien sûr je suis d'accord avec vous qu'il y a bien des groupes qui veulent faire entendre leurs intérêts. Mais les artistes dans une société ont un rôle particulier, une espèce de rôle d'éclaireur, ce qui n'est pas toujours le cas de tout le monde, bien entendu. C'est à ce titre-là, je crois, que nous devons faire une place spéciale à ce que les artistes ont à nous dire.

Je crois que nous sommes un pays très jeune, et nous n'avons peut-être pas une compréhension très claire et très grande du rôle que doivent jouer les artistes dans un pays. Quand tout disparaît, si on regarde les siècles passés, ce qui reste ce sont les oeuvres des artistes qui nous font comprendre un peu ce qu'est notre humanité. Alors, c'est dans ce sens-là, je crois, que les artistes ont un rôle spécial à jouer dans la question constitutionnelle au pays.

M. Bisson : Oui, je suis complètement d'accord avec vous. Un pays est vu à travers son art, il n'y a pas question. Mais ce que je voulais savoir c'est comment on s'accommode à tous les groupes.

La table est seulement si grande pour mettre divers groupes autour de la table, pour être capable d'entrer en discussion de la constitution. De quelles sortes d'outils aurais-je besoin comme politicien pour agrandir la table?

Mme Grisé : D'abord, M. Bisson, ce que nous avons acquis ici aujourd'hui est extraordinaire. C'est déjà la preuve que l'on est à l'écoute des artistes. Je crois que vous êtes sur la bonne voie, et je vous encourage à continuer.

M. Bisson : Merci.

Mrs Y. O'Neill: You may not want to answer this. I certainly have kept in very close touch with your work. I admire it and I know it is not an easy job. I know every judgement is made with difficulty and sensitivity. I really do believe that. I always would like more money to come to eastern Ontario, but that is not always the case. I am wondering if you would risk commenting on the Arpin report from Quebec.

Mme Grisé : Je pense que c'est une question à laquelle il serait prématuré de répondre immédiatement, mais je pourrais peut-être y répondre d'une autre façon, d'une façon non pas détournée mais que je connais davantage.

Le ministre de la Culture et des Communications a mis sur pied, au mois d'avril, un groupe de travail afin de préparer pour l'Ontario, et pour les francophones de l'Ontario en particulier, une politique culturelle qui a dû regarder de très près ce qui se faisait au Québec dans ce domaine de politique culturelle.

Bien entendu, on a procédé de façon différente, puisque le gouvernement de l'Ontario a commencé par consulter la base avant d'arriver à établir cette politique, alors qu'au Québec on s'est d'abord adressé à des experts, à un niveau plus élevé, et ça a donné le rapport Arpin. Maintenant il y a une façon différente de procéder : on retourne à la base et là il y a plusieurs questions qui sont débattues, dont le rapatriement, comme vous le savez tous, des pouvoirs en matières culturelles au Québec d'une part, et la mainmise de l'état sur la culture et les arts d'autre part.

Je crois que, en ce moment, si vous suivez un peu ce qui se passe dans les journaux, tout le monde n'est pas

d'accord sur cette façon de procéder. Je crois qu'à cet égard, ça pourrait être ma réponse à votre question. Pour ma part, j'aimerais vous informer que le rapport va être rendu public, déposé en Chambre, demain à 13 h 30, alors vous aurez l'occasion de prendre connaissance de cela.

Ms Y. O'Neill: Does the Ontario Arts Council have many national affiliations? Do you meet regularly with other provinces that do similar things? I realize you are the largest, Quebec likely being the closest.

Ms Stewart: Maybe I will let Norm answer that.

Mr Walford: That is a very timely question in that we have just concluded a conference with all the other arm's-length arts councils.

Ms Y. O'Neill: Each province has one?

Mr Walford: No, in Canada there are six of us, including Ontario, Manitoba, Saskatchewan, Newfoundland, Prince Edward Island and New Brunswick. The other provinces do not have provincial arts councils. We have structured our meetings so that the arm's-length agencies have gotten together and discussed a common position on the Constitution, which we will be sending out over the wire in the next couple of days, very similar to what you have in front of you but phrased to reflect the six arts councils.

We also meet quite regularly with Canada Council and we have structured meetings, one a month ago, which include representatives of ministries where there are no arts councils. With the unfortunate exception of Quebec, the last meeting had every province, including the territories, represented. It was quite an interesting and fruitful discussion.

Ms Stewart: We also meet with people outside Canada—from Britain and the National Endowment for the Arts.

Mr Offer: Thank you for your presentation. One of the areas in the federal proposal deals with the question of the distinct society, and one aspect or element of that distinct society, Quebec, deals with its culture. Do you support the concept of the distinct society of Quebec in its entirety?

Ms Stewart: In its entirety? It is in our brief: "We believe it is possible to recognize the distinct cultural aspirations of the province of Quebec and the native peoples of Canada while retaining a strong national cultural identity."

Mr Offer: I take that to mean, and correct me if I take it the wrong way, that you do support the concept of a distinct society in terms of the cultural element it contains.

Ms Stewart: Yes.

Mr Offer: Is it improper for me to assume, because you have been specific, that you have excluded the other aspects of the distinct society?

Ms Stewart: Our job is to stick to the cultural. Obviously we believe in a quality of life and the kind of Canada we want to live in. The wording for this was discussed in great detail at our board level. Because we had been dealing with the Franco-Ontarian question for over 20 years, there was agreement around our organization for supporting the distinct cultural aspirations of Quebec, but it really is not our business to go into things unrelated to culture. We are focusing on just the cultural aspect.

Mr Walford: I think it is fair to say, though, that the articulation of distinctness probably comes through in culture more than in any other field, and so what we have tried to do is say that homogeneity of any kind is not one of the things we would suggest. That is partly in answer to the question of whether we can manage with an asymmetrical country, in terms of the agreements.

We recognize that Quebec has certain aspirations within Confederation and that they should be realizable. The question of how we phrase it in terms of distinctness is probably the key here. I think that in the last round of negotiations we did not have a clear enough idea of what that meant. Probably, if it were to be articulated, we would find that the cultural aspects of the francophone population in Quebec are at the essence of this, that this is really what we are talking about. Indeed, our position is that this should be allowed.

1620

Ms Harrington: I do not have a clearly defined question, but I do want to tell you that as government members we had a discussion a couple of weeks ago with the Minister of Culture and Communications about what is Canadian culture. It was in response to some of the federal proposals. I want to get a little more feedback from you on your concerns with regard to the federal proposal. This is your first area of concern: "a lack of definitional clarity as to the federal government's ultimate role and responsibility in cultural matters." We are talking about funding here, are we not?

Mr Walford: I certainly would not want to limit it to funding. Our concern is about what kind of fabric we will have nationally with whatever transpires between the federal government and the provinces. There was a fear clearly expressed at the meeting I was referring to earlier that if the provinces start to negotiate individually with the federal government on cultural matters—they do now in certain areas—everybody will want to negotiate and that, by some form of erosion, culture will indeed become almost exclusively a provincial responsibility. From where we sit, the sense of our sharing as a nation each other's cultural products, each other's ideas, all the things that flow from culture that define us as a nation will somehow or other break down a bit, so we are very concerned about what is on the table here in the sense that we understand the national institutions are not.

As our chair pointed out in her opening remarks, one of the greatest concerns—this is where the funding issue does become pertinent—is that by the process of starving some of these institutions slowly, the devolution that everybody is talking about is in fact happening, because it comes back to us to try to fill the gap each time. I think that does make the national presence weaker. There are different forms of devolution, and this is just one of them, but I think the fear of negotiating a position on things that are not negotiable now or even in the Constitution now with each province will lead to that sort of slow erosion.

The other thing is that with other provinces the fear was also expressed that if it becomes a negotiation between governments there is no assurance that the artists of the country are going to be the beneficiaries. The responsibility

may be transferred and the money may go elsewhere. I think that is a very legitimate concern.

Ms Stewart: The arm's-length question too, because right now all these agencies are set up through an arm's-length system. There is no guarantee that the money will come through at arm's length.

Ms Setterfield: On the question of our phrase "definitional clarity," the government's paper, in the three paragraphs that dealt with culture, was very unclear about what it means in terms of the negotiations with the provinces. On the one hand, they declare that they wish to maintain responsibility for the major institutions, the federal institutions, and they name a few of them, but then they go on to talk about these bilateral negotiations with the provinces and are not clear about whether in fact the regional share of the funding from the Canada Council, for example, is really up for grabs in those bilateral negotiations. In other words, the paper itself is very unclear about what they mean about what actually you would go and negotiate as a province. That is one point of definitional clarity.

The other thing, and it is not talked about in the constitutional paper, is that the arts sector is very worried about the issue of free trade and whether culture will be on the table in the trilateral agreements with Mexico and United States. This is something about which the arts community and the culture sector have felt very strongly for a very long time, since the free trade debates began with the United States. It is this issue of mushy language and at the end of the day we are not sure really what we are going to be talking about.

Ms Harrington: This is what we were concerned about, so I just want to rephrase: You do believe the federal level should continue to be involved in a funding way.

Ms Stewart: Absolutely.

Ms Setterfield: Yes, we do. We think it is possible to strengthen those national institutions which are talked about in the federal paper while at the same time recognizing that there are other areas that express the distinct cultural aspirations of the province of Quebec and the people of the first nations. We are certainly concerned about the fact that institutions such as the Canada Council can have a strong regional presence and provide good access across the country to good cultural programs for everybody only if they have sufficient funding, so it is very difficult to pull apart the issue of the Constitution and the funding. Although I know it has been expressed in Ottawa that we should try to do so, you always come down to money, do you not?

Ms Stewart: In his comments, Mr Beatty keeps saying that the national institutions will stay the way they are and that the negotiable part is the programs in his department, but as Gwen said, it is never very clear. Even though he is making these public statements, we have not had in writing that they will keep supporting the national institutions and keep adding to them. In a way, if you straight-line the national institutions, which they have been doing for many years, they are already cut by the standards of 10 years ago.

Mr Winninger: Given that artists tend to be among the most poorly paid sectors of employees—

Ms Stewart: We have a paper on that too in our package.

Mr Winninger: Yes, I noticed that. I wondered what might be your views on the social charter that is being debated right now, as many of your constituents in the arts community would probably value having some rights, such as housing, health care, education and a job, vouchsafed to them under this kind of charter.

Ms Stewart: I will answer, but I am answering for myself, not for my organization, because we have not really dealt with this. I remember talking to political friends many years ago and saying that maybe we should have a minimum wage that everybody in Canada would get, because most artists in this country get below the minimum wage. If everybody got \$20,000, every artist would have \$20,000. I was told, for a whole variety of reasons, why this was not a workable situation.

I know some visual artists who sell two or three paintings a year, who are suddenly taxed one year when they have sold three paintings and then, if they have not sold anything, are not taxed. I think how artists are taxed on the books they write and the paintings they paint is not fair. I think we should give people who are professional artists some kind of income but I am not sure how to do it.

Mr Walford: We have been working with the Ministry of Culture and Communications on Ontario's version of the status-of-the-artist legislation, with which we are in total agreement. It is of course a very complex subject and there are many aspects to it. I have just received on my desk the latest working papers, which are about three inches thick. We are certainly very much in support of both the federal and the provincial initiatives in that regard, which I think will go some way. It is not quite the same thing as the social charter, but it does define certain rights and privileges for the artists specifically. We are very much in favour of that, but we have not in fact taken a position on the social charter at this point in time.

Ms Stewart: Because it is such a complex subject. How do you define housing? How much housing is enough housing? Maybe the next time we come to see you we will have something.

Ms Setterfield: Can I answer as a private citizen? As I work for an agency that is a very democratic one, I think all my bosses here will let me answer as a private citizen. I do support the notion of the social charter and within it things like the status-of-the-artist legislation which could be rolled into it.

Ms Stewart: If there is a social charter, it should include culture. Although we have had discussions about this, that maybe it is not the right thing, I know the Premier wants a social charter. If it is going to have five or six elements in it, culture should be part of that.

Mr Winninger: What should be part of it?

Ms Stewart: Culture, the artists of Ontario or the artistic community. I am not sure what the right word is, but there should be some, because if you are looking at quality of life and what makes life better in Canada, I think that should be part of it. We have not got our wording right yet.

The Chair: I want to thank the members of the Ontario Arts Council for coming before the select committee today. We have appreciated your input today and I hope you will follow us as we continue to do our work. Hopefully we will be out with the final report some time in February.

Ms Stewart: Thank you very much. If you need any further information, Gwen is the expert who is collecting information. We do not have all the statistics, but if you need information on the arts, that is one of the reasons we came here today. In half an hour we cannot tell you very much, but if you need anything further, we are here.

The Chair: I understand. Thank you very much. I appreciate the offer.

I would like to now adjourn the meeting for today.

Mrs Y. O'Neill: Can we just ask a few more questions before we do that?

The Chair: About the travel?

Mrs Y. O'Neill: No, just about the rest of the meetings. You could cut off the TV, if you like.

The Chair: Yes, I think we will adjourn our meeting at this point and meet in our respective places tomorrow, in Fredericton and Halifax.

The committee adjourned at 1631.

CONTENTS

Wednesday 6 November 1991

Ontario Arts Council	C-1521
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SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

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C-43 1991

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Wednesday 20 November 1991

Select committee on Ontario in Confederation

Assemblée législative de l'Ontario

Première session, 35^e législature

Journal des débats (Hansard)

Le mercredi 20 novembre 1991

Comité spécial sur le rôle de l'Ontario au sein de la Confédération

Chair: Dennis Drainville
Clerk: Harold Brown

Président : Dennis Drainville
Greffier : Harold Brown

Published by the Legislative Assembly of Ontario
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Table of Contents

Table of Contents for proceedings reported in this issue appears at the back, together with a list of committee members and other members taking part.

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Table des matières

La table des matières des séances rapportées dans ce numéro se trouve à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et des autres députés ayant participé.

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au (416) 325-7400.

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

Wednesday 20 November 1991

The committee met at 1534 in room 151.

NATIONAL ANTI-POVERTY ORGANIZATION

The Vice-Chair: We have today lined up three different presenters. First of all we will be hearing from the National Anti-Poverty Organization. After that we will have two other presentations. We will start by calling the National Anti-Poverty Organization. We have John Clarke who is a Toronto board member of that association, and Lise Corbeil who is the executive director. Welcome to our committee. You have 30 minutes.

Ms Corbeil: I think everyone has the written submission we have prepared. Because of the time factor, I would prefer not to read all of it but to emphasize a few parts. Perhaps I could point them out as I go through.

The Vice-Chair: If you could allow five or 10 minutes at the end for questions, it would be appreciated.

Ms Corbeil: I start with the introduction because perhaps you do not know about the National Anti-Poverty Organization which was founded in 1971 at Canada's first Poor People's Conference. When NAPO was incorporated in 1973, NAPO members established as one of its founding principles the right of low-income Canadians to participate in policy debates on issues that have an impact on their lives, and that is what we have tried to do since 1973.

NAPO's current structure draws on individual members who are or have been poor, to fill at least three quarters of the 21 positions on our board of directors, which means we are a consumer organization. We represent poor people. At its most recent annual meeting, the board recognized that Canada is at the crossroads, that major discussions are taking place on the future of the country and on the nature of the social contract that will bind its citizens.

The future of Canada, the collective vision that will define it, as will be expressed in our country's Constitution, will have an incredible impact on the day-to-day lives of poor Canadians. For this reason, NAPO wishes to thank the select committee on Ontario in Confederation for inviting us to share our analysis on the federal government's proposals for constitutional reform as outlined in its two documents.

NAPO believes that the federal government's proposals for constitutional reform will have a major impact on the lives of poor people in Canada. However, as with other national groups directed by a volunteer board of directors living in all parts of the country, we have found it very difficult to acquaint ourselves with the proposals, analyse them in terms of their impact on poor people and come up with a coherent position. Our board meets once a year and the executive meets another three times a year. It has been quite a challenge to come up with a consensus statement, and the subject matter is very specialized. We decided this was a very important moment in Canada's history, that

poor people have not had a voice in the past and that we would do our best to give ourselves a voice this time.

The constitutional proposals are being discussed by many groups and organizations. As the discussions unfold, the federal government is providing more detailed information on some of the meaning of the proposals. As a result, discussions on the interpretation of the proposals and on their implications are ongoing, which makes it even more challenging for us to come up with a position.

We have agreed among ourselves that this is our position at the present time, given the information we have, and that it may evolve. However, the fact remains that we have definite opinions on the economic union proposals and a definite wish to see a charter of social and economic rights. I will talk about those two aspects later in my presentation.

In the brief, you will see we have taken a position on most of the proposals, proposals 1 to 28. For the purpose of keeping time for a discussion at the end of my presentation, I would like to skip over to page 4, the economic union proposals, and then the social charter proposals, or non-proposals, and our proposal for a social charter.

NAPO strongly opposes the federal government's economic union proposals because it believes the changes outlined in the proposals will make it unconstitutional for the federal and provincial governments to take the means necessary to fight poverty. The proposals would constitutionalize the corporate agenda which calls for more corporate profits, bigger companies competing in bigger markets, less restrictions on what business can and cannot do, less protection for workers, less taxes and less social programs. In our opinion, the proposals would ensure that governments will not be able to do what we want them to do, which is to put in place policies to eliminate poverty.

1540

It would become unconstitutional for provincial governments to develop economic policies that address the problems and the wishes of their citizens. Provincial governments would have to have economic policies in line with those of the federal and other provincial governments. Most levels of government would have to develop economic policies to promote price stability over increased employment opportunities. Provincial governments could no longer protect local businesses and their markets. The removal of barriers would create economies of scale for large corporations but would produce economic wastelands as smaller companies are driven out of business. Poverty would be constitutionalized.

We strenuously oppose the proposed amendments to the Bank of Canada Act. We believe that all financial institutions of government and all mechanisms that governments have at their disposal to influence the economy must be used in a way to promote the economic, financial and social welfare

of all Canadians. The economy should be a means to achieve the wellbeing of Canadians, not the opposite.

We also believe that the Bank of Canada should be used to mitigate by its influence fluctuations in employment levels. This goal, which is now part of the mandate of the Bank of Canada, must not be abandoned, as is proposed by the federal government. The Bank of Canada has not been working to meet this goal in the recent past and it has been criticized for it by groups such as NAPO. The solution is not to remove this goal from its mandate, but rather to make sure that the goal is respected.

We would take out of the government proposals the four or five proposals that have to do with the economic union and replace them by something that would enshrine the right of democratically elected governments to manage the economy in such a way as to end poverty. That, to us, is very important. This would include full employment at sustainable wages as the overarching goal of economic policy, just and favourable working conditions, price stability—it is not that we are against price stability; we just do not want it to be the only goal of economic policy—and the rights of Canadians to social programs such as housing, health care, education, child care and income maintenance.

Now I will turn to our discussion on a charter of economic and social rights, which is on page 7 of our submission. This of course is not part of the federal government proposals, but it is something we would like to see added.

The federal proposals do not address the need to entrench in any meaningful way the rights of those who have been disfranchised by the Canadian political process. Poverty is one of the biggest barriers to equality. If you look at the statistics, poverty causes ill health. Ill health is one of the consequences of poverty. Many different social problems come from the fact that people are poor. I do not mean social problems like prostitution; I mean the things people have to live with every day. If you are poor, you do not have decent housing, you do not have decent food, your health is not as good as if you were not poor, you have more problems in the school system.

To us, that means poverty is one of the biggest barriers to equality. But poor people are not expressly protected from discrimination by the Canadian Charter of Rights and Freedoms. NAPO believes that economic and social rights are in effect the missing equality right. If everyone is to be equal in Canada, then economic and social rights have to be part of the equation. For this reason, NAPO proposes that social and economic rights be entrenched in the Canadian Constitution in such a way that they can be claimed in a court of law or be justiciable in the same way other rights protected by the Canadian charter and the Constitution can be claimed. We propose that this be achieved by adding to the Canadian charter clauses spelling out economic and social rights. We also propose that the wording of the new clauses follow the intent of the wording of the International Covenant on Economic, Social and Cultural Rights, which Canada signed in 1976.

We propose that the wording of the new clauses be as follows—and I think that these clauses really speak to everyone who is poor in Canada, when he or she hears them. That is what the charter and the Constitution do to most

people, and this would be something that would speak to poor people.

Everyone has the right to an adequate standard of living, including adequate food, clothing and housing.

Everyone has the right to work, which includes the right of everyone to the opportunity to gain his or her living by work which he or she freely chooses or accepts.

Everyone has the right to the enjoyment of just and favourable conditions of work, including remuneration which provides all workers, as a minimum, with fair wages, a decent living for themselves and their families; safe and healthy working conditions; equal opportunity for everyone to be promoted in his or her employment to an appropriate higher level; and rest, leisure and reasonable limitation of working hours.

Everyone has the right to social security, including social insurance.

Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health.

Everyone has the right to education and to higher education.

This is in the International Covenant on Economic, Social and Cultural Rights, which we have already signed as a country.

NAPO does not agree with the view that social and economic rights should not be justiciable because they involve government spending and therefore should be under the control of elected officials, not the courts. Poor people have been fighting and will continue to fight for their rights in every way they can. They will continue to fight in the political arena; by having justiciable rights; they will not stop. They should also have the right to use the courts to fight for their rights if they decide that is the best strategy for claiming a specific right.

NAPO strongly believes that poor people should have access to the courts when trying to claim their rights, just as other disadvantaged groups have access to the courts through the Canadian charter. Social and economic rights should be rights that citizens can claim, not rights that governments decide to give or not to give. Poor people should make the decision when to use the courts and when not to.

The federal government itself recognizes it is important for people or firms to be able to use the courts to defend their rights against governments. With its proposal to put constitutional limits to the governments' intervention in the economic sphere, it has proposed that individuals or firms be given the right to challenge, through the courts, government actions that are inconsistent with the principle of free mobility within Canada. It is incredible to us that the federal government proposes to make the economic union a right that companies can claim in a court of law and not have social and economic rights at all in the Constitution.

Whether or not the economic union proposals are entrenched in a revised Constitution, a proposal which NAPO opposes, the pressure will remain to eliminate barriers to trade. In this context, justiciable economic and social rights will ensure entitlements to an adequate standard of living, to social security, to health services and the rest that cannot be taken away when competition among regions

puts pressure on governments for a downward harmonization of social programs and fiscal policy.

NAPO therefore proposes that the Canadian Constitution guarantee to all Canadians substantive economic and social rights, that is, entitlements that alleviate economic and social disadvantage.

We cannot stress enough the importance of the constitutional debate to the wellbeing of all Canadians, and in particular poor Canadians. The federal proposals are far-reaching. Their effects are not easy to make out. We believe the economic union proposals are in effect a way for the federal government to entrench its present economic policies so that it would become unconstitutional for future federal and provincial governments to take another course.

The economic and social policies of the present government have resulted in an increase in unemployment and in poverty and a decrease in supports to Canadians in need. The federal government has de-indexed income tax brackets, thresholds and credits; it has cut unemployment insurance entitlements; it has reduced federal contributions to health care and post-secondary education; it has introduced a cap on the Canada assistance program in three provinces, including Ontario. All these measures, and many more, have hit poor people. To have the economic, fiscal and monetary policies that have led to increased poverty entrenched in the Constitution of the country would in effect be constitutionalizing poverty. These, NAPO submits, are not the values Canadians would want to see in their Constitution.

It is very clear to us that the economic union proposals as they are outlined by the federal government must be scrapped. However, we as a country must give ourselves a mechanism that will protect our economic and social rights as citizens. It is important that the disfranchised, those facing barriers to equality that have proved to be insurmountable, must be given the power to claim those rights. That is why NAPO proposes that the Canadian Charter of Rights and Freedoms be expanded to include justiciable economic and social rights.

1550

Mr Clarke: I came here basically to play a supporting role but there are a couple of observations I might throw in. It seems to me that in terms of the national unity debate taking place right now the situation with regard to poverty is something that very much needs to be laid on the table. We do not support the notion that the discussion around the Constitution is irrelevant, but I think it is very easy to understand how that sentiment arises.

Before I came here I was at a meeting at a drop-in. We were discussing a crisis in downtown Toronto where possibly as many as 400 beds in emergency shelters are being temporarily wiped out. We are dealing with a situation where you have a city within a city in Toronto living on social assistance and where you have a million people living on social assistance in Ontario. The debate around national unity must ring very hollow to people who find themselves in that situation. It strikes us as enormously clear that if Joe Clark wishes to talk about national unity, his words will have somewhat less relevance to somebody who is freezing on the streets of Toronto than to people who have

the economic luxury of some choices and some ability to sit back and contemplate and discuss the unity question from the vantage point of a comfortable economic position.

It strikes us also that it is precisely a federal government that has presided over a disastrous collapse in living standards and a destruction of social programs that is presuming to talk to us about national unity. We find that hypocritical and very unfortunate. We are dealing with a situation where a government that has spent several years creating poverty and misery is now actually seeking, as Lise pointed out, to constitutionalize the de facto arrangement it has forced down the throats of larger and larger numbers of Canadian people. We find that something that needs to be challenged.

Many of the provisions in the federal proposals we would consider extremely dangerous. The notion of fixing on the questions of mobility of capital and so-called responsible fiscal policy and keeping that in line with monetary policy we think are measures that are designed to legitimize a process of destroying people's living standards and lives in the interests of what are essentially a wealthy few.

Particularly we look with dismay at the proposals to enshrine property rights in the Constitution. Were that to be a signal for corporations and the personally wealthy to go out on a binge of litigation, it could have the most disastrous impacts for poor people, for unemployed people, for working people, for people concerned with the environment, for tenants and for just about every imaginable section of life.

A real, definite economic and political agenda is being forced down our throats under the very dishonest guise of bringing the country together. We think that is something that needs to be opposed very strongly by the Ontario government. We hope the government would wish to work for the enshrining of people's social and economic rights in the Constitution. We also hope the government would wish to give people the equal right, as the wealthy and the corporations have, to go to court and litigate, and to work for those things.

I would like to conclude by making the point that while we certainly support the notion of enshrining economic and social rights in the Constitution, those rights will remain pieces of paper as long as governments fail in practice on a day-to-day basis as they go about their legislative work, to take seriously the job of eliminating poverty in this very wealthy country.

The Vice-Chair: Thank you very much for an interesting presentation. We have a series of people who want to ask questions. We will start with Mrs Carter.

Ms Carter: That was certainly a very interesting presentation. I have not heard everything that has come before this committee, I joined it fairly late, but I have heard quite a few presentations. Certainly you have covered new ground here, especially in regard to what you see as being the effects of the economic union.

It seems this gets us to something that is not strictly a constitutional matter, and that is the whole question of free trade, globalization of business, harmonization and what is happening to economics globally. It seems to me, given the situation we are getting into now, the wealth might quite

well not be available to do the things we want to do. That is something this government is finding out. Whether it is the recession or whether it is part of a trend that is not going to reverse itself, we are desperately short of money to do the things we want to do.

If this country becomes impoverished not because we do not have resources but because they are being drained away from us, people are not going to get these things we have written in the Constitution that we want everybody to have. I wonder if you could comment on your attitude to those wider issues.

Ms Corbeil: I have two comments. First of all, the globalization trend is probably here to stay, although many of the ways it is being played out can, in our opinion, be changed to be less detrimental to the people who belong to NAPO; the poor people. If the pressure to remove barriers towards a global economy is to stay, we had better make very sure we protect the rights of the disfranchised, the people who have always been at a disadvantage to claim their rights. That is why we have proposed the justiciable social and economic rights.

Ms Carter: I think my point is the money has to be within the system, and the way things are developing now it just will not be there.

Ms Corbeil: That is my second point. Right now poor people have given themselves an organization called the charter committee on poverty issues that is trying to use the existing Canadian charter to go to the courts to claim their rights. The remedies they ask for do not necessarily require money. They might require changing a piece of legislation, changing a practice such as asking for deposits from welfare recipients, the case in Peterborough, or the intended practice of making the list of people on social assistance available to the elected official.

It is not necessarily a question of money. That is part of it. There is a question of money a lot of times. If you are claiming your rights as a property person—not physical property but something someone has that he or she can lose—you are probably asking the government to stop doing something so that you can continue having access to your property or to what you have. But if you are a propertyless person or if you are poor, you are not going to ask the government to stay away from something you have because you have nothing.

It seems rather ironic that people who have property can go to court and say, "You have no right to take from me," and people who have nothing do not have access to the court to say, "What you're doing to me is completely unconscionable." Yes, there is a question of resources, but there is also a question of entitlements.

1600

Mr Curling: This question may have been asked; I came in late. What bothers me in what you talk about is what some of the groups call the social agenda, the rights of Canadians to social programs such as housing, health care, education, child care and income maintenance. When I hear about rights I never understand what that means: "I have a right to this. I have a right to housing." What would it mean in your group that one has a right to housing?

Ms Corbeil: It would mean, for example, that Mr and Mrs Wiebe who live in southern Ontario and who were not able to have access to housing because their income was something like \$14,000 a year—they had seven children they had to give up to the children's aid society because they were not able to house them—would have redress and would be able to have access to housing.

There are some basic things. People should not be hungry and people should not be homeless. That is what we mean. We are not lawyers. The wording we have is from the International Covenant on Economic, Social and Cultural Rights. We have chosen that wording because Canada is a signatory to that international covenant. Lawyers might tell us we need to refine that wording a little in order for it to be able to be claimed in a court of law, but at the present time that is as far as we can go, given our resources and the short time available.

Mr Curling: This is precisely what bothers me about some of the things people want in the Constitution. "Let's put it in the Constitution and let's worry about the price later on." I understand and I think it is appropriate for all of us to be housed properly and to have good security. All that comes with cost and we have to have good economic policies in order to have good social policies. They go hand in hand as a matter of fact.

I am a bit concerned that as we try to put the Constitution together we say, "Let's put everything in there and later on we will find out about the cost; later on we will define what it really means about rights." Sure, you should not discriminate in the Constitution, but we continue to have discrimination. I feel provincial and municipal governments can put good policies in and we can have redress every three or four years. We can throw the buggers out and get people in who will direct themselves to those issues.

I am concerned about what we try to put in the Constitution and that most of those governments will say, "We didn't provide it so if you want to have redress, go and amend the Constitution or go and attack the Constitution in the Supreme Court." My concern lies there, and I wonder whether you look at it that way too.

Ms Corbeil: Section 15 of the Canadian charter protects some groups from discrimination. Gender discrimination and sex discrimination are not acceptable right now in Canada, and that has led to pay equity and employment equity legislation. Those pieces of legislation were expensive but they are a redress for something that has been historically unfair. That is the way I see it and I think most people would see it like that. We are just asking that the same sort of redress be allowed, the same right to claim redress against discriminatory practices be allowed on the part of people who are economically disadvantaged and basically poor.

The Vice-Chair: We have three more people who want to ask questions and we are quickly running out of time. If we can move through it quickly they may have a chance.

Mr Harnick: I am interested in your concept of the charter of social rights and the justiciability aspect of it. If I take for a moment your first recommendation, and I will paraphrase, that everyone has the right to housing. If someone does not have a home or a form of decent housing, are

you saying that, on the basis of this proposal, that person can then go to the court and say to the court: "I don't have decent housing. The government should therefore provide it to me"? Is that the way you envisage a social charter working?

Ms Corbeil: Not quite. I think the way we see it working is that if the government scraps a program that is expected to provide social housing and if the government decides, as it did in the last budget, to cut from a social program 50% of the costs that it had at a time when there are incredibly long waiting lists, that would be subject to redress. That would be subject to having someone call it unconstitutional or against the charter of socioeconomic rights.

Ms Harrington: I want to thank you very much for coming. I want to say very briefly that I know what you are asking from us who are in government is very difficult in a technical sense. But I think you are putting forward a very valid position, which is that it is time to redress things that have been institutionalized for centuries. You cannot do it overnight and it is not going to be easy, but you are asking us to look at something which is historically unfair. This is what we call institutionalization of poverty, and we know it is there. It is part of our whole social system and we cannot make it right very soon, I am sure, but we can at least look at the problem and realize it is there and try to do something with it.

Mr Clarke: If I could very quickly say something, I think we are really dealing with a question of priorities. It is unquestionably true that the working out in practice of a social right is a complex matter. It has to be woven into individual pieces of legislation. There is the question of litigation before the courts. But one could take a similar position, I think, when it comes to civil rights. It would be very possible to make a case for the inconvenience of the right to assemble, yet the right to assemble is something that is recognized, enshrined and regarded with some importance.

When you look around the streets of Toronto and see the crisis of homelessness, the crisis of poverty, I think we must recognize there is a need for some fundamental changes. While we do not make some sort of god out of the notion of something that may be enshrined in a constitution, because there are many countries that are signatories to international agreements or have constitutions to say wonderful things and do not live up to them, we are looking for a handhold. We are looking for something actually enshrined that people can point to and use in the struggle for what should be fundamental rights, things like affordable housing, decent jobs and adequate social services.

The Vice-Chair: I would like to thank you both, John Clarke and Lise Corbeil, for a very interesting presentation to our committee. It contained quite a bit of valuable information.

1610

ASSOCIATION INTERCULTURELLE FRANCO-ONTARIENNE

Le Vice-Président : Présentement, dans nos audiences publiques, on appelle, de l'Association interculturelle franco-ontarienne, MM. Mohammed Brihmi et Aman Yoboua. Vous avez 30 minutes pour faire votre présentation, et vous

êtes capables d'allouer peut-être dix minutes à la fin pour qu'on puisse avoir la chance de poser des questions. Merci.

Mr Curling: Will the presentation be done in French or in English?

The Vice-Chair: In French. En français.

Mr Curling: Do we have translations?

The Vice-Chair: Yes, there is translation available in the back. It is standard process and procedure for the assembly.

M. Brihmi : Je tiens à remercier les membres du comité de nous avoir invités afin de vous donner notre point de vue concernant les propositions fédérales sur le dossier constitutionnel.

L'Association interculturelle franco-ontarienne regroupe des associations et des communautés d'origine ethnique d'expression française. Notre association se considère comme le dernier-né de la francophonie ontarienne. Ça fait presque une année qu'elle existe, mais les associations membres, ça fait quinze ans ou plus qu'elles existent. Nous avons décidé de regrouper nos efforts afin de vous faire entendre une voix, voix qui représente et qui reflète les besoins de ces communautés.

Le dossier constitutionnel nous tient à cœur parce que nous croyons que nous bénéficions de la Confédération telle qu'elle est. Nous croyons aussi que la Confédération telle qu'elle est ne répond pas à tous les besoins des membres de nos communautés. Il y a beaucoup d'efforts, beaucoup de travail à faire afin de rendre cette Confédération apte à répondre d'une façon adéquate à nos besoins, toutes et tous.

Ce mémoire est une version améliorée d'un forum que nous avons organisé au mois de février passé. Nous avons organisé ce forum public pour en effet répondre à des questions que votre comité a soumises dans son document de travail. Nous étions fortunés à l'époque d'avoir M. Tony Silipo, qui est venu aussi pour échanger avec les membres de notre communauté.

À ce mémoire, nous avons aussi ajouté d'autres débats, d'autres échanges que plusieurs membres de notre communauté ont eus, lors du Forum des citoyens, soit lors des débats que la communauté franco-ontarienne a organisés sur ce sujet-là et soit aussi dans d'autres circonstances.

Nous avons choisi quelques points qui nous touchent de très près afin d'en discuter avec vous concernant les propositions fédérales. Le premier point c'est la Charte canadienne des droits et libertés. Avant d'aborder ce point, nous désirons préciser le fait que nous croyons à la primauté de la Charte canadienne des droits et libertés. Nous sommes fiers d'être Canadiens. Nous sommes bénis, comme Canadiennes et Canadiens, de vivre dans un pays bilingue. Nous sommes d'avis que le fait d'avoir deux langues officielles est un aspect positif et important pour l'image de marque que le monde se fait du Canada.

Les propositions fédérales parlent de l'attachement des Canadiens aux principes d'équité, d'ouverture et de pleine participation de tous les citoyens à la vie de leur pays, quelles que soient leur race, leur couleur, leur croyance, leur condition mentale ou physique ou leur culture. Cela nous concerne tous comme Canadiennes et Canadiens. Mais nous n'avons rien de spécifique pour les communautés ethnoculturelles dans ces généralités.

Comment, en effet? Nous, êtres équitables, allons respecter les différences des cultures sans avoir une loi, par exemple au niveau fédéral, qui permette une certaine équité envers ces communautés-là. Ça, c'est une première contradiction qui nous semble exister entre ce grand concept d'équité. Mais lorsqu'on n'a pas en effet des lois dans le système qui permette cette équité...

Il va sans dire que la diversité culturelle offre des avantages immenses pour l'Ontario et pour le Canada. D'ailleurs, si le gouvernement de l'Ontario reconnaît d'une façon générale que la diversité de la collectivité ontarienne constitue une source d'enrichissement culturel, social et économique pour la province et ses habitants, le gouvernement de l'Ontario s'est engagé aussi à poursuivre l'égalité de traitement et de chances pour toutes les Ontariennes et Ontariens et reconnaît qu'un climat racial harmonieux est essentiel à la prospérité et au bien-être de la province. Nous demandons que le gouvernement fédéral fasse de même. Nous trouvons malheureux que les propositions fédérales passent en silence la contribution des communautés ethniques à l'enrichissement du Canada.

L'Ontario est le moteur économique et la province la plus peuplée du pays. Il est de notre devoir comme Ontariens et Ontariennes d'exiger le respect et l'inclusion de l'enrichissement des communautés ethnoculturelles dans la réforme constitutionnelle.

Probablement, nous attribuons cette négligence flagrante aux recommandations du Forum des citoyens de M. Spicer, qui n'a pas su et qui n'a pas pu intéresser et rejoindre les communautés ethnoculturelles. Il est vrai qu'il n'y a pas mal de Canadiens qui se sont prononcés contre ce qu'on qualifie en anglais le multiculturalisme, parce que nous n'avons vu que cette version d'une façon générale, de cet aspect, de cet enrichissement, de cette contribution des communautés d'origine ethnique.

Le deuxième point, c'est la charte sociale du gouvernement de l'Ontario. Nous n'avons pas tellement étudié cet aspect afin de vous donner une version globale et définitive de notre organisation, mais nous pensons qu'il serait probablement judicieux d'inclure dans la Charte canadienne des droits et libertés une charte sociale qui pourrait garantir à tout citoyen des services sociaux et de santé, d'un océan à l'autre.

Si le Canada accepte et encourage l'afflux des immigrants au pays, il faut s'assurer aussi qu'on leur offre les moyens et les facilités nécessaires pour leur intégration. Nous avons des cas de nos communautés où on accepte des gens comme immigrants, mais où on ne reconnaît pas leur expérience de travail dans leur pays d'origine; on ne reconnaît même pas leurs diplômes dans leurs pays d'origine et même si parfois ces gens-là viennent avec des diplômes qu'ils ont faits aussi dans des pays occidentaux, tels que la France, la Belgique, la Suisse ou autres. Cela semble un problème que nous devons adresser d'une façon ou d'une autre. Si on accepte des gens et si, dans leur demande d'immigration on les accepte avec ces diplômes-là, il faut qu'on s'assure qu'on ne va pas refuser leurs diplômes et aussi la base de leur expérience de travail.

1620

La reconnaissance du caractère distinct du Québec : Il est important que l'Ontario reconnaisse le caractère distinct du Québec et que nous travaillions d'une manière acharnée afin de l'accommoder dans la Confédération. Il nous semble qu'il y a un consensus qui se forme d'une façon générale concernant cet aspect de la reconnaissance du caractère distinct du Québec. Il est évident que le Québec est unique et diffère des autres provinces soit dans le fait que la langue de la majorité des citoyens de cette province est le français, et qu'ils ont une culture unique en son genre et une tradition de droit civil.

Nous croyons aussi que le Québec constitue une richesse et un patrimoine d'une valeur inestimable pour le Canada. Notre association n'est pas tout à fait d'accord avec ce qui est inscrit dans le document fédéral, qui reconnaît la responsabilité du gouvernement de préserver les deux majorités et les minorités linguistiques du Canada et ne fait pas la promotion de la dualité linguistique au pays.

Nous croyons insuffisant ce qui est mentionné dans l'article 25.1(1) du document fédéral. Ce document se lit comme suit :

«Toute interprétation de la Charte doit concorder avec :

«(a) la protection et la promotion du caractère de société distincte du Québec au sein du Canada ;

«(b) la protection—je précise. Dans le premier point on a parlé de protection et de promotion, et dans le deuxième point on ne parle que de protection—de l'existence de Canadiens d'expression française, majoritaires au Québec, mais présents aussi dans le reste du pays, et de Canadiens d'expression anglaise, majoritaires dans le reste du pays, mais présents aussi au Québec.»

Nous voyons d'une façon claire et nette qu'il y a une injustice envers une partie des Canadiens si on veut seulement les protéger et ne pas promouvoir leur existence. Si nous voulons réussir dans notre exercice constitutionnel, il faut qu'on s'assure d'un traitement égal pour tous les Canadiens d'un bord à l'autre. Ce n'est pas juste de protéger et de promouvoir les uns et de faire moins pour les autres.

Les droits des autochtones : Nous croyons que les autochtones méritent plus que le traitement honteux qui leur a été infligé jusqu'à présent. Il va sans dire qu'ils ont été victimes d'injustice et d'incompréhension. Quand on parlait des deux peuples fondateurs du Canada, eux, les premiers habitants de cette terre, étaient complètement ignorés. Nous devons reconnaître le rôle joué par les trois communautés fondatrices de ce pays, à savoir les communautés autochtones, les communautés de langue anglaise et les communautés de langue française.

Nous nous félicitons en effet du rôle que le gouvernement de l'Ontario joue présentement dans la reconnaissance de l'autodétermination des peuples autochtones.

Les institutions politiques et la distribution des pouvoirs : Nous sommes en faveur d'un fédéralisme fort, dynamique mais imaginatif et qui répond aussi aux besoins des Canadiens et des Canadiennes. Un grand nombre d'entre nous sommes insatisfaits des bassesses des politiques gouvernementales et le manque de respect de leurs promesses. Il est temps que les partis politiques cessent d'imposer une discipline partisane lors des votes. Il faut faciliter un vote

libre à la Chambre des communes et permettre aux députés de voter d'après leur conscience sur pas mal de dossiers.

Concernant la réforme du Sénat, nous croyons en un Sénat élu pour une période déterminée et non pas nommé à vie. Nous nous joignons à la majorité des Canadiens et Canadiennes qui réclament l'abolition de ce Sénat et son remplacement par un Sénat élu directement par le peuple. Cette élection peut se faire selon le principe d'égalité entre les quatre régions du pays, à savoir la région des Maritimes, le Québec, l'Ontario et les provinces de l'Ouest.

Pour ce qui est de la division du pouvoir, nous pensons qu'il est temps pour une redistribution des pouvoirs entre le fédéral et les provinces. Il est vrai qu'il existe des pouvoirs qui sont mieux exercés s'ils répondent plus spécifiquement aux besoins des communautés locales.

On peut parler, par exemple, de deux cas. Si on prend l'exemple de l'immigration, nous pensons que, pour nous en Ontario, on aurait probablement besoin d'une catégorie d'immigration qui pourrait être différente de l'immigration dont le Québec, ou dont les Maritimes auraient besoin. L'infrastructure de notre économie est basée sur le secteur manufacturier. Ce n'est pas le cas par exemple dans les Maritimes et ce n'est pas le cas dans d'autres provinces du pays, ce qui fait que dans ces secteurs-là, les besoins peuvent être différents. Nous en Ontario pouvons chercher des pouvoirs en immigration qui tiennent en considération le besoin spécifique.

L'autre exemple qu'on peut donner, c'est le domaine de la pêche, comment ça se fait — et je l'ai entendu à plusieurs reprises — que des fonctionnaires d'Ottawa exigent des quotas, qu'ils exigent des normes à des pêcheurs aux Maritimes et en Colombie-Britannique. Ces gens-là sont beaucoup plus proches de leur vécu et de leurs besoins et ils peuvent répondre. Nous croyons que leurs provinces peuvent répondre d'une façon adéquate à leurs besoins et que le gouvernement fédéral peut laisser ce champ aux provinces, afin d'avoir juridiction là-dessus. Mais nous devons nous assurer que le fédéral exige des normes nationales.

Pour ce qui est de l'économie, les compétences économiques au Canada sont partagées entre le fédéral et les provinces. Nous favorisons la collaboration et la concertation entre le palier fédéral et les provinces afin de mieux élaborer des politiques économiques.

Si nous prenons par exemple les décisions de la Banque du Canada, la plupart des décisions touchent les provinces, et les provinces n'ont pas un mot à dire sur le taux d'intérêt, l'inflation et la politique monétaire de la Banque du Canada. Nous croyons que probablement le conseil des gouverneurs ou le conseil d'administration de la Banque du Canada devrait être composé de représentants aussi de plusieurs provinces afin de tenir en considération leurs besoins.

Le renforcement de l'union économique est un point qui nous préoccupe tellement. La bonne santé de l'économie canadienne n'est pas l'affaire du gouvernement fédéral seulement ; elle est aussi l'affaire des provinces, et c'est pour cette raison que nous encourageons les deux paliers à la collaboration et à la concertation.

Notre organisme est en faveur de l'harmonisation des politiques économiques, mais il faut qu'on respecte les

besoins spécifiques de chaque partenaire. Ce qui est bon pour le gouvernement fédéral n'est pas nécessairement bon pour l'Ontario ou pour n'importe quelle autre province.

La formation professionnelle : Pour que le Canada demeure compétitif à l'échelle nationale et internationale, il nous faut former la main-d'oeuvre pour qu'elle reste à la fine pointe de la technologie.

Ce point est très important pour nos membres qui ont besoin de la formation afin de s'ajuster à leur nouvelle réalité dans le pays. Si, par exemple, un grand nombre de nos membres viennent avec une expérience autre que canadienne, il faut qu'on s'assure que nous leur offrons une formation adéquate afin qu'ils se réajustent aux besoins de l'économie canadienne et aussi à la compétitivité de l'économie internationale.

1630

En conclusion, il faut qu'on reconnaisse que le système fédéral actuel ne reflète plus la réalité canadienne. Ce système a créé l'aliénation de différentes communautés, le mécontentement des autochtones, des Québécois, des communautés de langue officielle, des communautés ethnoculturelles, etc. Il nous faut, comme Canadiennes et Canadiens, travailler pour corriger des injustices qui ont existées et qui existent encore si nous voulons produire un document constitutionnel acceptable à la majorité d'entre nous.

Il faut reconnaître l'apport et la contribution du peuple autochtone et avoir le courage de leur permettre de gérer leur présent et de contrôler leur avenir.

Il faut reconnaître la société distincte du Québec.

Il faut reconnaître la contribution et l'apport des générations successives des Canadiens d'origine ethnique, ce que nous appelons communément les néo-Canadiennes et les néo-Canadiens, au développement de l'une ou l'autre des communautés nationales.

Il faut garantir et encourager une plus grande mobilité économique des biens, des capitaux, des services et des individus au Canada.

Le Vice-Président : Merci beaucoup, Monsieur Brihmi. On a des questions.

Mrs Y. O'Neill : I want to thank you for a very complete and what I consider a very powerful brief. I have three questions. I think they can be answered with yes or no, and I hope you will try to do that because I know we are very short of time.

Do you have a Quebec affiliation or component that would be of the same mind or that you would be working with? Is there a complementary association in the province of Quebec?

Mr Brihmi : Il y a un an, j'ai assisté à un débat avec Alliance Québec. Alliance Québec, c'est l'organisme qui parle au nom de tous les Québécois d'expression anglaise.

Lors de ces débats, nous avons rencontré des Québécois d'origine ethnique et d'expression anglaise. Nous avons essayé de lier contact avec eux afin qu'on puisse tous travailler ensemble pour apporter notre contribution. Nous croyons que c'est très important pour nous d'accueillir le Québec dans sa diversité, avec les Québécois de souche

et ceux qui viennent d'arriver là-bas et ceux d'expression anglaise.

Je ne vous cacherais pas que nous n'avons pas fait de grands pas. Nous n'avons pas beaucoup réussi en raison de la limite de nos moyens, mais je pense que c'est quelque chose qu'on devait vraiment envisager et qu'on devait faire pour rejoindre d'autres Québécois comme nous afin de travailler pour trouver des moyens d'entente pour ce dossier constitutionnel.

Mrs Y. O'Neill : Merci. Are you espousing—I did not hear you specifically say it—a Canada clause? Would parts of a Canada clause attend to some of your concerns?

M. Brihmi : En effet, la clause Canada nous préoccupe. Tout à l'heure, j'ai oublié de mentionner un point, par exemple, qui nous préoccupe présentement dans la Charte canadienne des droits et libertés. C'est l'article 23 de cette charte, qui permet à des gens comme nous, aux minorités, d'avoir accès à l'éducation en langue de minorité.

Par exemple, selon cet article, moi qui ai fait mes études élémentaires, secondaires et universitaires en français, je ne suis pas considéré en Ontario comme francophone parce que je ne suis pas qualifié selon cette loi. Ma langue maternelle est l'arabe même si j'ai étudié en français. Les trois critères d'admissibilité dans cet article 23 sont les suivants : Il faut que la première langue apprise et encore comprise pour des gens comme moi soit le français. Il faut que j'aie étudié à l'élémentaire et au secondaire en français ou que j'aie un enfant ou des enfants qui ont étudié au Canada en français à l'élémentaire et au secondaire. Ça, c'est un point que nous espérons que l'Ontario va apporter à ses présentations et que nous aussi allons apporter à nos présentations au gouvernement fédéral afin de nous assurer que cette injustice soit corrigée.

Pour ce qui est de la clause Canada, nous pensons qu'il est très important d'avoir probablement une clause Canada si nous ne sommes pas satisfaits avec la Charte canadienne des droits et libertés. Nous ne sommes pas des experts, en effet, du dossier constitutionnel pour vous dire les différences qui peuvent exister entre la Charte canadienne des droits et libertés dans une clause Canada ou une clause Canada dans la Charte canadienne des droits et libertés. Qui va avoir la primauté, par exemple ? Est-ce que la clause Canada, la Charte des droits et libertés, la société distincte? À vrai dire, je ne suis pas en mesure de répondre de façon beaucoup plus intelligente à cette question. Mon collègue Aman a quelque chose à ajouter là-dessus.

Malheureusement, notre expert constitutionnel ne pouvait pas venir à 4 heures parce que nous étions supposés vous rencontrer à 5 heures. On s'excuse de ne pas avoir quelqu'un de notre communauté qui peut répondre, probablement, à ce genre de question.

Mme Carter : Je ne comprends pas exactement ce que vous voulez dire au sujet de l'article 25. C'est à la page 7 de votre présentation. Il m'apparaît qu'il manque des mots. Il s'agit de 25.1(1)(a), n'est-ce pas ? Nous avons «la protection et la promotion du caractère de société distincte du Québec au sein du Canada». Ce qui manque c'est la promotion du caractère anglais du reste du Canada, n'est-ce pas ?

Mr Brihmi : Ce qu'on voulait dire dans ce point-là, c'est que vous avez à la page 14 du document fédéral cet article 25.1(1)(a) qui parle de la protection et de la promotion, par exemple, de la société distincte du Québec, du français au Québec. On ne fait pas de même avec les anglophones québécois et on ne fait pas de même avec les gens comme nous, presque un million de francophones en dehors du Québec. On parle de protection seulement. Pourquoi parler dans un cas de protection et de promotion mais dans notre cas ne parler que de protection ? C'est nous qui avons le plus besoin de promotion de notre situation.

Le Vice-Président : Je vais me permettre de vous poser une question, Monsieur Brihmi, et à votre collègue. Dans votre mémoire vous avez parlé de la question du Sénat, comme l'ont fait beaucoup de Canadiens et d'Ontariens qui ont fait une présentation à notre comité, comme à tout autre comité à travers le pays. Un des points qui est mis de l'avant c'est qu'on doit faire une réforme du Sénat faisant affaire avec un Sénat élu. Comme membre du comité et aussi comme citoyen de la province et du pays, je me pose des questions à cet égard.

Est-ce que c'est prudent de faire des réformes concernant le Sénat ? On ne dit pas seulement qu'il serait élu, mais on commence à voir le besoin de donner des pouvoirs directement à ce Sénat. Est-ce que c'est possible que ça ôterait la possibilité d'être capable de vraiment promouvoir, sur certaines lois, d'aller vers un système plus américain qui a besoin non seulement de l'appui de la Chambre des communes mais aussi du Sénat ? Si on a un Sénat élu puis on lui donne des pouvoirs, qu'est ce que ça veut dire pour le pouvoir de notre Chambre des communes? Est-ce qu'il est possiblement une réaction de la population contre les gouvernements en général si elle dit que le Canada a tellement changé avec le gouvernement présent qu'il y a un besoin de faire quelque chose pour les arrêter ? Est-ce dans cette vue-là que la proposition est mise ou bien sur une autre vue?

M. Brihmi : Non. On le sait tous et toutes qu'il y a un mécontentement. Il y a beaucoup de mécontentement concernant le rôle que joue le Sénat actuel. Je me rappelle personnellement que l'on a parlé de plusieurs cas où le Sénat, qui n'est pas élu, qui est nommé, a pris des décisions qui parfois n'étaient pas ce que nous voulions, ce que moi je voulais et ce que plusieurs autres personnes de l'autre côté voulaient voir le Sénat jouer comme rôle. C'est pourquoi nous nous disons, en premier lieu, qu'on a un problème avec l'existence du Sénat tel qu'il est. Ça, c'est le premier point. Si on a un problème avec ça, il faut qu'on le corrige.

Comment on peut corriger cette situation-là ? Je pense que c'est d'élire des gens qui vont représenter et refléter les besoins de leur communauté locale. Si les gens ne sont pas satisfaits avec les décisions de ces sénateurs, ils peuvent en ce moment s'en débarrasser. Si en effet on devrait avoir un système calqué sur le système qu'on a aux États-Unis—on peut comme Canadiens être imaginatifs, trouver quelque chose de spécifique à nous, de différent, parce que d'ailleurs, lorsqu'on a parlé de notre Sénat, on n'a pas dit, et je le verrais mal, un Sénat qui va accorder un nombre de représentants égal à toutes les provinces. Ça n'aurait pas

de sens pour l'Ontario que l'Île-du-Prince-Édouard ou Terre-Neuve ait un nombre égal de sénateurs qu'en Ontario ou au Québec. Je dirais que non, cela ne serait pas juste. Mais je ne veux pas présentement vous dire: «Voilà ce que j'aimerais. Voilà les compétences exactes, précises, que je veux donner au Sénat». Il peut garder les compétences qu'il a présentement, mais on devrait avoir un Sénat qui serait élu parce que —

Le Vice-Président : Ce n'est pas seulement avoir un Sénat élu. Quand ça vient au pouvoir, s'agit-il d'augmenter les pouvoirs du Sénat, ou bien, vous dites de garder les pouvoirs du Sénat comme tel ?

M. Brihmi : On peut garder les pouvoirs du Sénat tels qu'ils sont présentement tout en gardant aussi les pouvoirs, parce que, si on donne un pouvoir plus accru au Sénat, c'est quoi le rôle que doit jouer la Chambre des communes ? Qui va en premier légiférer ? Qui va faire en sorte qu'on va créer un gouvernement ? Est-ce que la Chambre des communes va donner un gouvernement ou est-ce à partir du Sénat qu'on va former un gouvernement ? Comme je l'ai dit, je ne suis pas constitutionnaliste, mais à partir des informations que nous avons — et c'est dommage qu'on n'a pas notre constitutionnaliste avec nous qui pourrait répondre à ce genre de question — je crois qu'on peut garder les compétences de la Chambre des communes et du Sénat.

Le problème qu'on a présentement avec le Sénat c'est les nominations. C'est le clientélisme, les nominations partisans au Sénat. C'est écoeurant; ça n'a aucun sens que les amis d'un premier ministre ou d'un gouvernement soient nommés en cette raison-là et d'autres personnes... Ça donne une mauvaise indication aux Canadiennes et Canadiens par rapport à notre système politique.

Le Vice-Président : Vous avez un point, M. Yoboua ?

M. Yoboua : La raison pour laquelle nous avons opté pour le Sénat élu c'est pour donner une raison légitime pour ces sénateurs. Une fois élus, ils pourront prendre des décisions parce qu'ils seront par le peuple. Donc, s'ils s'opposent à une loi de la Chambre des communes ; c'est normal. Actuellement, ils ne sont pas élus mais il se trouve qu'ils peuvent bloquer des lois qui devraient passer, et pour des raisons qu'on ne sait pas ils peuvent retarder. Une fois élus, ce sera légitime, effectivement, de poser leur action.

Le Vice-Président : Je vous remercie beaucoup. À ce point-ci, on en vient à la fin de nos audiences publiques pour la journée. Le groupe qui devait présenter n'est pas disponible aujourd'hui.

This is going to bring to an end our committee hearings for today. There was a group that was to present that unfortunately called at the last minute and had to cancel, so the committee stands adjourned until Monday at 3:30 in the afternoon.

The committee adjourned at 1645.

CONTENTS

Wednesday 20 November 1991

National Anti-Poverty Organization	C-1527
Association interculturelle franco-ontarienne	C-1531

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

Chair: Drainville, Dennis (Victoria-Haliburton NDP)

Vice-Chair: Bisson, Gilles (Cochrane South NDP)

Carter, Jenny (Peterborough NDP)

Curling, Alvin (Scarborough North L)

Eves, Ernie L. (Parry Sound PC)

Harnick, Charles (Willowdale PC)

Harrington, Margaret H. (Niagara Falls NDP)

Malkowski, Gary (York East NDP)

Mathysen, Irene (Middlesex NDP)

Offer, Steven (Mississauga North L)

O'Neill, Yvonne (Ottawa-Rideau L)

Winninger, David (London South NDP)

Clerk: Brown, Harold



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Official Report of Debates (Hansard)

Monday 25 November 1991

Journal des débats (Hansard)

Le lundi 25 novembre 1991

Select committee on
Ontario in Confederation

Comité spécial sur le rôle de
l'Ontario au sein de
la Confédération

Chair: Dennis Drainville
Clerk: Harold Brown

Président : Dennis Drainville
Greffier : Harold Brown

Published by the Legislative Assembly of Ontario
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Éditeur des débats : Don Cameron

Table of Contents

Table of Contents for proceedings reported in this issue appears at the back, together with a list of committee members and other members taking part.

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Table des matières

La table des matières des séances rapportées dans ce numéro se trouve à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et des autres députés ayant participé.

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au (416) 325-7400.

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

Monday 25 November 1991

The committee met at 1912 in room 151.

Clerk of the Committee: I wish to advise the members of the committee that the Chair and the Vice-Chair are not present this evening. I would call upon you to select an Acting Chair for tonight's meeting.

Mrs Mathysen: I would move that Mr Winninger take the chair this evening.

Clerk of the Committee: Thank you. It has been moved that Mr Winninger act as Chair for this evening's meeting. All those in favour say "aye." Contrary?

Agreed to.

ASSOCIATION CANADIENNE-FRANÇAISE DE L'ONTARIO

The Acting Chair (Mr Winninger): As Acting Chair, I would like to say bienvenue tonight to the Association canadienne-française de l'Ontario. We have your written brief and we look forward to your oral presentation, but before we hear from you, perhaps you could introduce yourselves so we know who you are.

M. Tanguay : J'aimerais vous présenter M^e Yves Le-Bouthillier, qui est professeur en droit, en common law, à l'Université d'Ottawa et membre du comité constitutionnel de l'Association canadienne-française de l'Ontario, et aussi M. Fernand Gilbert, qui est le directeur général de l'Association et qui lui aussi siège au comité constitutionnel de l'Association.

The Acting Chair (Mr Winninger) : Merci. I would like to remind you that you have half an hour for your presentation tonight. Please, commencez.

M. Tanguay : Merci beaucoup. Au nom de la communauté franco-ontarienne et en mon nom personnel, je tiens à vous remercier d'avoir invité l'Association canadienne-française de l'Ontario à venir vous présenter sa réaction aux propositions de modifications constitutionnelles et d'ententes administratives élaborées par le gouvernement du Canada.

D'entrée de jeu, je dois vous mentionner que l'ACFO n'entend pas vous entretenir de l'ensemble des 28 propositions fédérales, mais plutôt de celles qui touchent et rejoignent de façon particulière les buts que la communauté franco-ontarienne se propose d'atteindre en matière constitutionnelle.

Ces objectifs, que vous connaissez sans aucun doute, ont trait à la reconnaissance constitutionnelle en Ontario du français comme langue officielle, du droit à l'autogestion et à des services en langue française gérés et contrôlés par la communauté franco-ontarienne dans le domaine de l'éducation, et du droit à la gestion pleine et entière et à des services en langue française gérés et contrôlés par la communauté franco-ontarienne dans le domaine des caisses populaires.

En matière constitutionnelle, les Franco-Ontariens et les Franco-Ontariennes aspirent également à la création, la protection et la promotion d'institutions à caractère social, culturel et économique qu'ils pourraient gérer et contrôler. Nous désirons également être associés, comme partenaires à part entière, au processus actuel de modification de la constitution canadienne.

De plus, nous voulons nous assurer que toute passation et toute délégation de pouvoir entre les instances fédérales, provinciales et municipales soient accompagnées d'une garantie du respect des droits acquis, et ceux susceptibles de l'être, de la communauté franco-ontarienne. Finalement, il nous paraît fondamental que le renouvellement du fédéralisme canadien soit promu dans le respect de tous les droits individuels et collectifs des communautés qui tissent le canevas de notre société.

À la lumière de ces objectifs, j'aimerais donc vous entretenir aujourd'hui des propositions fédérales suivantes : la proposition numéro 2, reconnaissance du caractère distinct du Québec et de la dualité linguistique du Canada ; la proposition numéro 7, qui traite de la clause Canada dans la constitution ; les propositions numéros 9, 10 et 11, qui abordent respectivement les principes et les détails de la réforme du Sénat et la ratification par le Sénat des nominations aux conseils et organismes de réglementation ; la proposition numéro 12 portant sur les nominations à la Cour suprême du Canada ; la proposition numéro 22 sur le pouvoir résiduel ; et finalement, la proposition numéro 25 ayant trait à la délégation des pouvoirs législatifs.

Avant de commencer mon exposé, j'aimerais attirer votre attention sur le document que nous vous avons distribué. Ce document n'a malheureusement pas pu être traduit à temps pour notre présentation aujourd'hui. Néanmoins, vous noterez que pour chacune des propositions dont nous voulons vous entretenir, nous avons jugé opportun de vous référer aux pages pertinentes de notre publication bilingue, *Un Canada à redéfinir*, document qui élabore la position constitutionnelle de la communauté franco-ontarienne et dont vous avez déjà reçu copie. Ces références peuvent en fait apporter des précisions quant au cadre et à la signification de certains concepts employés ou peuvent être utilisés en guise de lecture complémentaire.

Vous noterez également que ce texte est présenté en trois colonnes. La colonne de gauche reproduit le texte intégral de la proposition fédérale qui nous intéresse ; la colonne médiane contient des modifications qui, à notre avis, devraient être apportées à la proposition fédérale, alors que la colonne de droite comprend les éléments qui devraient y être ajoutés.

Je vous demanderais à ce moment-ci de prendre le document en question et je pourrais peut-être passer quelques commentaires au sujet de ce document. Je donnerai le

numéro de la page afin qu'on puisse, ensemble, passer à travers assez rapidement.

1920

Pour ce qui est de la proposition fédérale numéro 2, à savoir la «reconnaissance du caractère distinct du Québec et de la dualité linguistique du Canada», nous suggérons d'apporter, premièrement, une modification à l'item (b). Si vous remarquez à la gauche, le gouvernement fédéral ne parle que de la «protection». Dans notre modification, nous parlons de la préservation et la promotion. En plus, plutôt que de parler des «Canadiens d'expression française», nous parlons de «communautés d'expression et de culture françaises». Nous aimerions que cette dimension soit ajoutée. De même, pour ce qui est, dans la deuxième partie, de «Canadiens d'expression anglaise», ici nous parlons de «communautés d'expression et de culture anglaises».

Alors, voici pour ce qui est de la modification. Nous croyons qu'il est essentiel, puisque nous parlons de la dualité linguistique, et la dualité linguistique étant un principe fondamental canadien, que l'Ontario nous appuie en demandant au fédéral d'ajouter différents items que nous énonçons ici, à savoir (c), (d), (e), (f), (g), (h) et (i).

Ici on parle des pages 1 et 2. Nous réitérerons à (c) que «la province de l'Ontario adhère aux articles 16 à 22 de la Charte canadienne des droits et libertés».

Pour ce qui est de l'item (d), nous suggérons une possibilité de bonifier l'article 23.

Nous suggérons qu'à cette proposition numéro 2 du gouvernement fédéral soit ajouté, à l'article 19, «le droit d'être compris» en français «par les juges», ou en anglais, dépendant de la province dans laquelle nous nous trouvons.

L'item (f) s'agit simplement d'un bref changement à l'article 20, d'une suggestion. Pour ce qui est de (f), si vous remarquez l'article 20, nous allons à (a), où on parle de «l'emploi du français ou de l'anglais» qui «fait l'objet d'une demande suffisante». Dans le texte de la Charte qui existe présentement, c'est le mot «importante», alors c'est le changement du mot «importante» pour que ça devienne «suffisante».

Nous demandons aussi qu'à cette clause, la «reconnaissance du caractère distinct du Québec et de la dualité linguistique du Canada», on ajoute la dimension des organismes parapublics, notamment les hôpitaux et les universités et ainsi de suite.

Si vous me permettez, nous allons passer à la proposition numéro 7 à la page 3.

La clause Canada dans la constitution : J'aimerais vous rapporter à cette modification que nous demandons et la modification, par exemple, «l'attachement des Canadiens aux principes d'équité», et ainsi de suite. Ce n'est pas compliqué. Nous demandons, dans la colonne médiane, d'ajouter «ou leur langue».

Pour ce qui est de l'item numéro 2 sur cette page mais qui correspond à l'item numéro 5 dans la clause Canada, à savoir «la reconnaissance de la responsabilité des gouvernements de préserver les deux majorités et minorités linguistiques du Canada», nous suggérons de le changer et d'indiquer : «l'obligation des gouvernements de préserver, protéger et promouvoir la culture et les droits

linguistiques de chacune des communautés de langue officielle du Canada».

À l'item numéro 10 de la clause Canada dans la constitution, peut-être que mon confrère ici voudrait commenter.

M. LeBouthillier : On y parle tout simplement du respect des droits individuels et collectifs tels qu'énoncés dans la Charte canadienne des droits et libertés. En vue du projet de charte sociale proposée par le gouvernement ontarien, évidemment, s'il y a une telle charte, ça devrait être ajouté. Si on respecte la Charte canadienne, il faudrait également respecter la charte sociale, sur laquelle l'ACFO réfléchit actuellement.

M. Tanguay : Si on passe maintenant à la page 4, aussitôt que j'aurai fini, si on peut entretenir des questions à ce moment-là, il nous fera plaisir d'y répondre.

Pour ce qui est de la question du Sénat, j'aimerais peut-être résumer en disant que de façon générale, nous nous entendons avec les différents éléments proposés par le gouvernement fédéral, mais dans notre suggestion de modification nous suggérons d'intégrer les propositions numéro 9, 10 et 11. Alors, à vous ensuite de poser des questions sur nos recommandations en fonction de notre proposition à l'égard du Sénat.

Je vous demande à ce moment-ci de passer à la page 9. Pour ce qui est des nominations à la Cour suprême du Canada, j'aimerais tout simplement vous faire remarquer que nous réitérons notre position que nous avons déjà mentionnée, à savoir «la Cour suprême du Canada doit compter un minimum de quatre (4) femmes» ; que trois juges proviennent du Québec, et «que les juges nommés à la Cour suprême du Canada soient aptes à entendre toute cause dans les deux langues officielles, et ce dès leur nomination».

Si on passe maintenant à la page 10, pour ce qui est de la recommandation numéro 22, à savoir le pouvoir résiduel. Vous pourrez questionner à ce moment-là. Dans les quelques instants qui nous restent, peut-être qu'un de mes deux confrères ici pourrait renchérir.

En terminant, j'aimerais peut-être dire deux mots sur la délégation des pouvoirs législatifs. Cette délégation de pouvoirs étant un élément très important, nous suggérons au gouvernement de l'Ontario d'appuyer la position de l'Association canadienne-française de l'Ontario, à savoir que toute délégation de pouvoir soit accompagnée de l'article 20, qui assurerait la garantie de ces pouvoirs vers une province.

Je vous remercie énormément de votre attention. Si vous avez des questions, il nous fera plaisir d'entretenir avec vous certaines réponses.

Le Président suppléant (M. Winninger) : Je vous remercie pour votre présentation, qui était très intéressante. Je crois qu'il y a des questions. On peut commencer avec M^{me} O'Neill.

1930

Mrs Y. O'Neill : I want to begin, M. Tanguay, by putting in the record of Hansard your participation on the panel at our conference. I congratulated you that night and found there was a lot of hard work and very solid thinking presented to us that night and I see it continued again. You

people were all working very hard on all these issues, and I thank you for that.

I would like to ask some questions that you did not really touch on but are subject matter you touched on. We were in Quebec last week and we were very careful to listen, with our ears right on the ground, to everything that we were hearing about the distinct society. I do not at this moment want to comment on what we heard there, because I do not think it would be in the proper context.

Do you find the distinct society now in this set of proposals, as opposed to what had happened to this point in the accord of 1990? Do you see a difference? Is this more comfortable? Would you comment about the difference you see between 1990 and what we have in 1991 regarding that clause.

M. Tanguay : M. Gilbert, having participated very actively — il pourrait peut-être commencer.

M. Gilbert : Il y a une différence, effectivement. En 1990, la proposition ne parlait pas de promotion, et pour nous la promotion est excessivement importante. C'est pour cela que nous parlons actuellement. Là je ne sais pas si vous voulez avoir un commentaire sur la proposition fédérale, qui parle de la société distincte, ou de notre proposition.

Pour nous il est excessivement important non seulement d'obtenir des droits comme Canadiens, comme Ontariens, mais également d'avoir des outils pour exercer ces droits. C'est pour cela que pour nous actuellement en Ontario, une société distincte ne pourra pas être distincte si la reconnaissance du français n'est pas préservée, n'est pas protégée et n'est pas promue. C'est là la distinction, je pense, avec la proposition antérieure. Il y a peut-être d'autres commentaires.

M. Tanguay : Peut-être juste un demi-commentaire.

Si je comprends bien, avant même que les propositions soient présentées par le fédéral, M. Clark, dans une élocution qu'il a présentée, avait garanti à la communauté francophone vivant à l'extérieur du Québec que la dimension «promotion» serait dans les propositions. Pour une raison que nous ne comprenons pas jusqu'à ce jour, l'expression «promotion» a été éliminée. Nous considérons que, pour développer un Canada que nous on considère étant une vision de ce Canada qu'on recherche tous, il faut absolument que cette dualité linguistique soit garantie et que cette garantie se réalisera alors que «promotion, protection et préservation» soient inclus dans le texte.

M. LeBouthillier : Je vous remercie pour votre question, Mme O'Neill, parce que je crois que vous touchez vraiment au cœur du sujet.

Il y a deux façons d'aborder : ce qui a trait au Québec et ce qui a trait à la dualité linguistique. Dans l'accord du Lac Meech, il y a avait une disposition générale qui touchait à l'ensemble de la constitution, et on voit ici qu'il y a quand même une référence, dans la clause Canada, à la société distincte. En ce qui a trait au Québec, on fait ici une référence à la société distincte dans la Charte et on définit également, une société distincte, bien qu'on utilise le terme «notamment», ce qui veut dire que ce n'est pas exhaustif.

En ce qui a trait à la Charte, il est bien certain que pour le Québec on va prendre en considération la société distincte. En ce qui a trait à la constitution, ça va dépendre de l'importance qu'on va attacher à la clause Canada, si c'est vraiment une disposition qui va aider à interpréter la constitution.

En ce qui nous touche, la dualité linguistique, sur le deuxième morceau, nous notons le même type de langage mais l'absence du terme «promotion» qu'on retrouve dans la «société distincte» et qu'on retrouve aussi dans le «patrimoine multiculturel» à l'article 27 de la Charte, où on fait référence au terme «promotion». On peut se demander pourquoi cette absence? Quand on parle du juge Dickson, de l'affaire Mahé, un juge très respecté dans l'histoire du Canada, on dit que c'est l'un des grands juges qu'on avaient à la Cour suprême du Canada. Son héritage qu'il a laissé pour la dualité linguistique avant de se retirer, à l'affaire Mahé il disait que l'article 23, les dispositions linguistiques au Canada, «vise à maintenir les deux langues officielles du Canada ainsi que les cultures qu'elles représentent et à favoriser l'épanouissement de chacune de ces langues». Il ajoutait plus tard que c'est «préserver et promouvoir la langue et la culture». Dickson n'avait pas d'hésitation à utiliser le terme «promouvoir».

Il y a deux semaines à Montréal, Kim Campbell disait que «la constitution canadienne, notamment les garanties linguistiques prévues par la Charte canadienne des droits et libertés, traduisent les victoires que les groupes linguistiques ont remportées de haute lutte. En effet, ces garanties constituent le fondement de la promotion des droits linguistiques.»

On a le juge Dickson, on a Kim Campbell. Je peux vous citer des gens et des documents historiques — on en a plusieurs — qui utilisent le terme «promotion». Pourtant, on ne le retrouve pas ici, et cet article va servir à interpréter les dispositions de la Charte qui existe.

Je pose la question, pourquoi promotion ? Pourquoi promotion du patrimoine multiculturel ? Pourquoi promotion de la société distincte ? Pourquoi promotion de n'importe quoi ? C'est probablement pour sécuriser un groupe, pour permettre à ce groupe de se développer. Ici on voit un groupe duquel on dit constamment qu'il y a de l'assimilation, etc, et pourtant ce groupe-là n'a pas le droit à cette promotion dont on nous parle de façon générale.

On va nous dire peut-être que ça va l'inclure implicitement. On va créer de l'incertitude, on va nous forcer d'aller de nouveau devant les tribunaux pour dix ans, pour peut-être se faire dire que parce que ce n'était pas l'article 25 implicitement, nous ne l'avons pas.

Moi, je peux lancer un défi. Si ce comité-ci veut faire quelque chose de constructive, c'est de refaire cette clause, peut-être pas de la même façon, mais qu'on nous parle d'épanouissement, qu'on nous rassure qu'on n'est pas ici pour conserver un statu quo qui n'est pas satisfaisant.

Pour les communautés francophones, que ce soit de l'Ontario ou de partout, c'est vraiment ici où vous touchez. Je crois que l'aspect le plus important, c'est qu'on nous nie la promotion. Je crois que le Canada, dans ce monde troublé comme on l'a vu hier en Belgique, devrait être un exemple de tolérance. On dit toujours que le Canada c'est un exemple de tolérance. Je crois que la tolérance passe par le

développement de nos valeurs fondamentales : pas protéger ce qui existe déjà, mais développer. Je ne veux pas continuer, mais je trouve que c'est là l'aspect le plus important et je crois qu'il y a plein de précédents juridiques qui démontrent l'urgence de ce document.

Mrs Y. O'Neill: And we heard it in New Brunswick.

The way it is written now was compared to "pickling," if you can get that. This is a francophone who said she sees it as a preserving, not a promoting. We all had a good laugh on that one, because we would not have thought of that kind of simile.

I will pass because I have so many questions.

The Acting Speaker (Mr Winninger): Are there any other questions? Hearing none, I would like to thank you all for coming today and sharing your views with us, and I too would like to thank M. Gilbert for his contribution to the constitutional conference. I sat beside him at the workshop on the Charter of Rights, and his contribution was indeed very powerful. Thank you all for coming tonight.

M. Tanguay: Merci beaucoup. J'aimerais aussi vous remettre nos commentaires à l'égard de notre participation à la conférence constitutionnelle. Nous avons promis à votre comité un document spécial et nous l'avons ce soir.

Mrs Y. O'Neill: You are ahead of us, Jean.

1940

ONTARIO TEACHERS' FEDERATION

The Acting Chair (Mr Winninger): I will call on the Ontario Teachers' Federation. I understand that we have with us today Ruth Baumann, Margaret Wilson and Ron Poste. We have your written presentation and we look forward to hearing your oral presentation as well now.

Mr Poste: You and the members of the committee can relax. I do not intend to read this to you but I hope I can make a few comments around it that will help bring everything into context.

The teachers of Ontario have a major interest in what is going to happen to Canada and its current unity discussions. Within the Ontario Teachers' Federation we spent considerable time at a meeting that involved representatives of our five affiliates and also the members of the executive, which represents all five affiliates. This was also a major point of discussion at the recent meeting of the Canadian Teachers' Federation. It might be of interest to the members of this committee to know that the Canadian Teachers' Federation is devoting two days in December to a continuation of the discussion of Canadian unity. Hopefully that kind of context will give the members of the committee an idea of the importance we place on this issue.

Eight points form the foundation for our presentation. A little later on we will be going through them and you will have the opportunity to read our thoughts on each of the points raised in the federal discussion paper, but I think it is important that we state these fundamental principles at the beginning.

We believe in a federal system for Canada and a sovereign, strong and united Canada.

We believe Quebec should be recognized as a distinct society within Canada.

We believe there needs to be a change and that the inherent right of aboriginal self-government should be a major concept in whatever happens for the future of Canada.

We believe the affirmation, protection and promotion of minority language rights.

Some of us are not convinced that there needs to be a Senate, but if the conclusion is that there has to be a Senate, then we think that the Senate needs to be the subject of major reform so that it, at the least, recognizes regional interests.

We oppose the guarantee of property rights in the Constitution.

We support the concept of a social charter. It is probably of no surprise to anyone to note that we believe that the shared-cost programs under that should include such social benefits as education, health and child care.

If it meets with the approval of the group, I am going to go through and comment briefly on each of the points that is a part of the federal discussion. Then if there are points of clarity that need to be enhanced a little further, we could perhaps come back to them.

The basic rights and freedoms are supported, but we do not support the guarantee of property rights within the Constitution. One of our major concerns with the whole Constitution and Parliament is that if something gets enshrined in the Constitution, it becomes adjudicable within a court system. We believe the elected representatives of the country do have the right to make decisions, and in some areas the courts, subject to law that is already there, should not have the right to have sole adjudicating power on some of the issues. Hence, you will notice in our brief that we are against the inclusion of some things within the Constitution because it seems to put the courts, rather than elected representatives, in control.

We do not agree with the override provision of the federal proposals.

As indicated in my opening remarks, we believe that Quebec does need to be recognized as a distinct society within the charter.

Points 3 to 6, which start on page 4 of the information you have before you, deal with the aboriginal rights. As I indicated in my opening remarks, it is our thought that the rights of Canada's aboriginal people need to be adequately addressed in the current discussions.

The Canada clause, as it is proposed, presents a bit of a concern to us because we think it needs expansion. From our perspective—we are education-oriented—we note that education is missing there and suggest that if the Canada clause is to be appropriately worded, it should cover the right of education to all citizens, to children and youth, and the principle of first call as defined by the United Nations.

There are a few editorial changes we would make on some of the others. It seemed obvious to us that gender seemed to be missing from the list. You can read the major points there.

On page 6, we believe the protection of the rights of the English in Quebec and the rights of the French outside of Quebec is important. Perhaps this one bullet needs to be expanded so that there is no doubt about the opportunity for both of those concepts to be met.

I think the others are fairly editorial.

At the bottom of the page, again because of our interest in education and children, we recommend that consideration be given to an expansion in that particular section.

On page 7, we think the role of the cabinet needs to be very carefully addressed. We as a group have some concerns with the role the cabinet currently seems to be playing. Our suggestions are outlined in the three points on page 7.

At the beginning, I indicated that we as a group are not convinced that we need to have a Senate. If we do have a Senate, it needs, in our minds, to be reformed in a major way. Our points of consideration for that are outlined on page 8.

We took a look at the appointments to the Supreme Court of Canada. In our opinion, as you can see from our comment on page 10, we believe the new concept proposed is more acceptable than the present practice.

The constitutional amending formula gives us a bit of concern. We do not believe any one province or territory should have the right to veto social programs. If we are going to be a united Canada, then we need to behave as Canadians without individual rights entrenched within any one province.

The education of students falls into our mandate. We really believe that if we are to be doing the right thing for children moving into a Canada of the future, the need to be educated in both languages is primary.

Section 15 gave us some concern. It is listed on page 12. It seemed to contradict section 121, but in our discussions we were wondering whether the way this is set out at this time is not more an impediment to the discussion of unity than it is helpful. While we are not experts in constitutional law, it seemed to us in our discussions that this could be a topic that might very well be set on the back burner. It needs to be discussed, but whether it needs to be discussed in the current context is not clear in our minds.

We have some concerns with the power of the federal government, the power it currently has or might want to take unto itself. You will note, in section 16, that we have a major concern with that. We are reluctant to give this kind of power to the federal government and we think it more appropriately should reside within the provinces and the territories of this country.

1950

In section 18, for training, we believe there needs to be a national agenda for education. The federal government does have responsibilities. The most recent Environics poll, which I have not read yet—it was reported to me tonight and I will certainly get a chance to see it tomorrow—indicates that the federal government should have a major role in the area of national training and retraining.

Immigration is a concern for education, because in many cases we are the people who need to provide English- or French-as-second-language training. Right now there seems to be no way to keep an immigrant to Canada in a specific province. The province where people choose to reside is saddled with the problem of providing the language training that is so necessary to function in our society. We believe the federal government must take responsibility

for this on a national level because there is no way to hold people within provincial boundaries.

The whole area of culture gives us some concern as we look at the proposal. As we have indicated here, we do not believe this particular domain should be shifted from the federal government to the provinces without the protection of vested rights, particularly those of the minorities.

We believe in a national broadcasting system. We believe that as a united Canada people anywhere in this country deserve to have the national broadcasting system providing programming in both official languages and we believe the responsibility for funding that is a responsibility of the federal government.

When we talked about residual powers, we very quickly got into a bit of quicksand in our discussion. As we tried to wrestle through it, we were not clear on exactly what the federal proposal was, so we are open on that and are trying to find more information in that particular area.

We are very much against the proposal on the federal declaratory power. Medicare was established under this particular section, and there is no doubt in our minds as Canadians that medicare is a benefit we have in this country that puts us ahead of many other areas. Without that federal declaratory power, one could argue whether we would actually have the medicare system we have right now. You will see in section 27 that we tend to reiterate our concern and we take it far enough that not even the majority should have the right to intercede in this particular area.

One of the concepts that kept coming up in our discussion was whether we are currently being overgoverned. We did not have an answer to that, but when we took a look at 28, it certainly looked like another level of government being imposed. If one can conclude that there might be some support for the fact that we are overgoverned at the present time, then it does not take a lot of projection to see why we are opposed to the seeming addition of yet another level of intermediary decision-making processes.

That covers the essence of our brief. As I indicated, we are not constitutional experts, but we have given some time to it and will be spending more time on it. We are committed to Canada as a nation and certainly are willing to participate in all things that we can do to make sure that is our future down the road.

The Acting Chair (Mr Winninger): Thank you for your thorough presentation and for moving forward with such a sense of confidence and assurance.

This is not the first time it has been suggested that we are overgoverned. I recall a delegation in Hamilton that suggested the same and that we might start by eliminating the provincial government.

Mr Poste: I was not quite that bold.

The Acting Chair (Mr Winninger): I am sure your paper will provoke some questions.

Mrs Y. O'Neill: A lot of questions. I am interested in a couple of things, particularly if I may go to page 6 for a second. You did not comment on the free flow of people, goods, services and capital. I do not know whether you were tying that into interprovincial migration on page 14. Have you talked about that with the Canadian Teachers'

Federation? It is certainly of interest in most of the other provinces and, as you know, the Maritimes are doing quite a bit on it. Has there been any discussion about this kind of thing, because teachers' qualifications and all that stuff is pretty significant, of course.

Mr Poste: There are a couple of answers here. As I indicated, the Canadian Teachers' Federation is spending two days in December looking at this. The only thing we were able to conclude at our discussions a week ago was basically support for the points you have on the first page, and some of those still have some debate going. At the Canadian Teachers' Federation level, this specific bullet I do not believe was discussed in depth, but we do have some points we would relate to, and teacher qualifications is one. Perhaps I could ask Margaret to expand on that.

Ms Wilson: The Ontario Teachers' Federation has been supportive over the last 10 years of movement of teachers within Canada. It has not always been easy. There was a point about eight years ago when Ontario allowed teachers to come in without restriction and get an Ontario teaching certificate, while only two provinces would take our teachers. OTF co-operated with the ministry in developing a series of reciprocal agreements. We now have reciprocal agreements with eight other provinces and would like to have them with all Canadian provinces. In other words, Ontario was supportive of the idea of teachers being able to move, but not everybody else was.

Mrs Y. O'Neill: Thank you, Margaret. I was also interested in the recommendation on page 10 that all children should be educated. I was really quite surprised and pleased and would like you to tell me how you came to that. I find it a very strong recommendation. It may not be even totally possible, if I take the word "all" to mean what most of us think is all. There seem to be exceptions in most boards, even in the city I come from, which has very strong immersion programs. Do you want to comment on that for us, please?

Mr Poste: We are supportive of the free flow of people within this country. This country has two official languages and if in fact the children of the future Canada are going to be able to move freely from province to province, then we think education in both official languages is essential.

Mrs Y. O'Neill: So you are suggesting offering it and not making it mandatory for students. This is kind of a key point from a teacher perspective.

Mr Poste: I do not know. I guess we are like you, we have been through the same type of questioning of the introduction of two language programs in education. I would have to say I am responding personally now: I do not know whether it would need to be legislated or offered. Perhaps my colleagues on either side have comments.

Ms Wilson: You have two problems. The sense I picked up at the executive, and at the committee looking at this prior to the executive, was that, in an ideal world, people would like to mandate at least some early exposure to both languages, recognizing that while not all children would have the capacity to develop fluency, many more would, and presently do, when they have even limited exposure.

The reality is that in English-speaking Canada right now we have serious difficulties in staffing the existing French-language programs. I understand it is not always that easy in Quebec to get qualified teachers for the English-language programs, although they are more limited than some of ours in French. One must always be able to deliver an ambition, I think. On this particular recommendation, we strongly believe that it is what we should be moving towards. But I would hate us to be mandating programs before we have the capacity to deliver them. We have been quite good at that in the past in other areas.

2000

Mrs Y. O'Neill: Thank you, Margaret. I will pass, Mr Chairman.

The Acting Chair (Mr Winninger): Ms Harrington, and then Ms Carter.

Ms Harrington: It is an excellent brief you have put together, very clear. But maybe that is a prejudice of some of us on this committee who are former teachers. We appreciate what you have done, especially the amount of study you have put into this in bringing your five affiliates together, and the further study you are going to be doing on it. I want to comment on a couple of items.

First, I found it interesting that you noted there should be more emphasis on the role of the cabinet in a parliamentary system and that the OTF believes the cabinet must have more flexibility. I am wondering, as we also at the provincial level have a cabinet, if you could explain what your suggestions might be.

Second, on page 8, you talk about Senate reform and whether there should be a Senate. We have heard a lot of delegations, and there is a fairly strong feeling that the Senate would serve some useful purpose if it were an effective Senate. I wanted you to possibly clarify your fourth point on page 8, "The OTF suggests that the government look at regional representation rather than provincial," and what you mean by that.

Ms Wilson: Let me start by saying that it was not easy to get everybody together for this. I was present for a couple more of the meetings than either Ruth or Ron, so I will have a crack at this.

It was the fairly strongly held opinion of the first committee we had work on this—they came from all of the affiliates—that we have been drifting towards a presidential Prime Minister, and that the cabinet, as a working cabinet, had become almost invisible to Canadians, outside of a couple of high-profile ministers, and that this is inconsistent with parliamentary government, because the checks and balances required in a presidential system do not exist in ours.

We felt we might be in less trouble generally if so much of the focus of the debate had not fallen on one individual. Regardless of who the Prime Minister is, in a parliamentary government the cabinet members themselves should have the flexibility occasionally to state their personal opinions. I have been trying to remember when the last one did in Ottawa. I do remember when I was a young teacher that occasionally cabinet ministers disagreed. Sometimes they resigned, but they did not leave Parliament. They were still

there. They got into trouble arguing over the armed forces and what kind of uniforms they would have and so on.

It is just that everything seems to have become solidified around one crystal statue. We like the system we have. We would like to get back to what it is supposed to be, where cabinet members have responsibilities as cabinet members, as well as a cabinet. I guess we are not enthralled with cabinet solidarity as the only way of thinking.

On regional representation in the Senate, we can understand some of the proposals coming from western Canada. This is not unrelated to our second point on page 8, about taxation and representation. The American Revolution was fought over no taxation without representation. We do understand that the proposal for the Senate would not allow it to control the Commons. At the same time it would have influence, and it could delay.

A Senate that has equal representation from each province in our view moves too far away from the basic principle of representation by population. It might be possible to conceive of regions in Canada represented in the Senate, if we have to have a Senate, to bring representation closer to representation by population, as opposed to Prince Edward Island having the same number of votes in the Senate as Ontario, which would be the most extreme. Well, I guess if the Yukon had votes, it would be more extreme.

Ms Harrington: So what you are proposing is, say, the Atlantic provinces and the western provinces have some kind of regional representation by population in the Senate?

Ms Wilson: Yes. That would be at least one other way of looking at it and I think it has been on the table in previous discussions. I do not know that anyone ever looked at it long enough to see whether it would work.

Ms Carter: Thank you for your very thorough presentation with well-thought-out and, it seems to me, sound conclusions.

I am rather intrigued by what is not there under sections 15 and 16 on pages 12 and 13. You say it is not useful to debate the economic union issue at the present time and then, under section 16, that you believe the section should be struck. I just wondered if you had more to say about that.

Ms Baumann: These two sections are the ones where our comments are very terse. I do not think they fairly reflect the concern we have about the current state of the economy in the province or in the country. If I go back to the comments Ron and Margaret made earlier, I think there was a strong feeling that the proposals under section 16 particularly, when you look at the provincial budget processes and so on, suggest discussions that would be obstructive rather than productive to have right now.

While we would very much like to see discussion about how to make both the Canadian and the Ontario economies function better, we are not sure that constitutional changes are really at the heart of those issues at the moment. Taking into account what we said earlier about the free flow of people and goods and services and mobility and so on, and that we do support those things, we think it would make more sense to get on with what goes into the

Constitution and then get on with the question of how we handle the economy.

Ms Carter: So you think that this would provide a block in succeeding, in getting this stage of things over?

Ms Baumann: The strong sense of a number of our people as we discussed these was that they were impediments to discussion at the moment, rather than things that enhanced it.

Ms Carter: You do not see a danger of loss of democratic control in some of these areas?

Ms Baumann: I think that is probably why some of our people felt that they were impedimental, that we were into a discussion about who could do what, and whether somebody was trying to take away powers, and that was going to sidetrack a discussion about the state of the economy or the basic agreements that we now have.

Ms Carter: So you see that as contentious, and therefore that is a reason why it should be deferred?

Ms Baumann: Yes.

The Acting Chair (Mr Winninger): Was there something you wanted to add on that last issue of Senate reform?

Ms Baumann: When we first discussed the question of regional rather than provincial representation, I think one of the feelings was that in a reformed Senate, which we would hope would be a more effective Senate, it would probably be more productive to general decision-making for the country if representation were regional rather than provincial, so that the people who were there saw themselves as being responsible for something more than a province in their representation in such a Senate.

The Acting Chair (Mr Winninger): Unfortunately we have run out of time, but I would like to thank you again for coming and sharing your views with us tonight. We will study your paper with interest. Thank you.

With apologies to the next deputation, we only have one interpreter with us tonight, so for his benefit and ours we are going to ask if you can wait five minutes while we break.

The committee recessed at 2008.

2016

URBAN ALLIANCE ON RACE RELATIONS

The Acting Chair (Mr Winninger): I would like to welcome the Urban Alliance on Race Relations here today. Perhaps you could introduce yourselves before you begin your presentation. I take this opportunity to remind you that we have allotted half an hour for each presentation.

Mr Dharmalingam: My name is Dharmalingam. I am the president of the Urban Alliance on Race Relations. I have with me Charlotte Chiba, one of the board members; Wilson Head, our past president, and Jim Putt, vice-president of the organization. Our brief is fairly small. I want to read it to you. Perhaps after that we will have the opportunity to ask some questions.

The Urban Alliance on Race Relations is pleased and honoured to have been given this opportunity to dialogue about the Constitution with the select committee on Ontario in Confederation. However, it cannot be assumed that we are currently in a position to respond adequately to

the federal government's proposals, for the following reasons: (1) We have little knowledge or background information about the issues behind the proposals and (2) we were not given enough time to become informed.

A brief note about what the organization is all about: The Urban Alliance on Race Relations was founded in 1975 by a group of Toronto citizens who were and are concerned about adverse discrimination. Our primary goal is to promote a stable and healthy multiracial environment in Metropolitan Toronto. The original focus was at the school and community level to raise consciousness about the problems surrounding racial disharmony. Currently our activities are focused in the following areas: the justice system, employment equity, education, media and publishing a quarterly magazine called *Currents*. We hope that through our efforts we can educate the private and public sectors about the reality of racism and work together with them to implement change.

The constitutional consultation process: Constitutional reform is an extremely important responsibility and probably the most critical act of citizenship a Canadian can assume. The federal government's proposals reflect the diverse issues which have arisen in this round of constitutional reform. If adopted, these reforms will affect each and every Canadian for generations to come.

We believe the fundamental problem underlying the present constitutional debate is public ignorance with respect to the constitutional process. The only difference between this constitutional amendment and the failed Meech Lake accord, where there was little or no public consultation process, is the fact that here we have the appearance of a public consultation exercise.

We are concerned about the manner in which the federal government has sought public opinion on its proposed constitutional changes, because we believe Canadians still lack the knowledge necessary to contribute to the process intelligently and responsibly. We are unequivocal in our belief that more time is needed for dialogue among all sectors of Canadian society about the Constitution.

The Constitution: The Constitution is a written and symbolic expression of our Canadian identity. It is the deed that draws us together amidst our diversity. Whether Canadian citizens, new immigrants or visitors from another country, individuals turn to the Constitution to learn what it means to be a Canadian. The role the Canadian Constitution plays in our daily lives cannot be over-emphasized. It is of fundamental importance that any amendments to the Constitution must involve all Canadians and reflect values and principles each of us can share and uphold.

Shared citizenship and diversity: The "notwithstanding" clause: It is our opinion that the proposal that the number of votes necessary for Parliament or a provincial Legislature to invoke the charter override, section 33, not be changed from a simple majority to 60% but instead be abolished in order to guarantee that the rights outlined in section 2 and sections 7 to 15 are entrenched. If this is not possible, we propose that the Constitution be amended to include section 2 and sections 7 to 15 and that these sections should replace the proposed Canada clause.

Social charter: We affirm the concept of a social charter as proposed by Premier Bob Rae. In particular, we affirm the philosophy of the following section of the social charter:

"The health care, education and social welfare services were viewed by many witnesses as significant achievements of which Canadians should be proud. It was the great value of these achievements and the importance with which they are viewed which underlay the many calls to ensure that any reorganization of federal-provincial relations should not endanger social programs.

"Broad acceptance of the fact that a fundamental restructuring of federal-provincial powers was both necessary and inevitable was evident in many of the presentations we heard. Given this, the primary concern of most witnesses was to ensure the federal government retained sufficient powers to maintain national unity, to ensure national standards for social programs and to perform truly national functions, which included national institutions."

The universality of these particular programs is fundamental to Canadian citizenship.

Canada's distinct societies: We acknowledge that both francophone people and aboriginal people should be recognized as distinct societies in terms of language and culture. In addition, we believe that aboriginal people should have immediate recognition of their right to self-government.

Canada clause: While the Canada clause is comprehensive, the wording of the clause is redundant because the same principles are already inculcated in the Charter of Rights and Freedoms.

Responsive institutions for a modern Canada: Parliamentary reform: We support the introduction of further parliamentary reform to allow for greater participation in the democratic process. The reform should include (1) House of Commons, (2) Senate—all representatives to be elected—and (3) reduction of the power of the Prime Minister. We also urge the federal government to look at other parliamentary models to ascertain whether there is anything which could be adopted to ensure that the reform is fair to all Canadians.

Preparing for a more prosperous future: Broadening the common market clause: There should be a constitutional amendment to ensure free trade among all Canadian provinces and territories. The reforms should cover the free flow among all provinces and territories of capital, goods, services and people.

Conclusion: Currently, Canadians find themselves at a historical turning point. Our constitutional Confederation is no longer what it was in 1867 or 1982. Although our values and principles, such as justice, fair play, tolerance and freedom, remain as a basis upon which Canadian democracy continues to flourish, these values and principles now embrace much more. They include the concept of equality, a public recognition of our cultural and regional pluralism, the recognition and respect owed to aboriginal peoples of Canada as its first inhabitants, an acceptance of them along with Quebec as culturally and linguistically distinct societies, the concurrent individual and collective nature inherent in Canadian citizenship and a greater awareness of Canada as a member state in the global community.

Mr Malkowski: Thank you very much. It was a very good discussion, but I would like you to clarify on section 33. You want section 33 removed and replaced with what section—did you say 17—or with what proposals in the Canada clause? Could you explain and explain why you think that?

Mr Dharmalingam: I am going to ask Charlotte to respond to the question.

Ms Chiba: I think what was meant here was that the section 33 override is something that we understand may on occasion—for example, the Quebec government has used the section 33 override clause to ensure its linguistically distinct character. However, we want to ensure section 33 is not used arbitrarily. Therefore, the sections that are presently subjected to a 33 “notwithstanding” override—namely, section 2 and sections 7 to 15—ought perhaps to be reviewed to see whether all of them should be subjected to the section 33 override. We were thinking specifically of section 2, which is the liberty clause and also sections 11 and 15. I think that is it so far. You can see that we did not go into great detail in this because we are not that schooled in the particular arguments, legal arguments at least, that might be involved in this.

Mr Malkowski: Okay, but your point is that you would like to see protection for minority rights, correct? Basically that is what you are asking?

Ms Chiba: There is a difficulty here. The Charter of Rights historically, as I understand it, was a charter that special interest groups seemed to have had a great deal of involvement in. It says very little. I think the charter cases show that there is very little involvement of individuals per se. Therefore, the charter rights are in fact guarantees of group rights and have very little to do, in some instances, with individuals. That kind of question is difficult to answer because on the one hand the charter cases seem to protect group rights as opposed to an individual having access to the courts to protect individual interests.

Mrs Y. O'Neill: I want to go back to page 1. I am not saying you are dishonest, but I hope you will speak as much from your heart as you can on this one. We had a series of hearings, as you know, in this committee that began last January and ended around March 1. If you remember, this room used to be very full of people, and I think televisions were on in many people's homes. As we have worked—now we are into our 12th month, really—we have found that certainly this room is not as full. Certainly our hearings are not as concentrated.

I am just wondering, when you say it should go on longer and there has not been a way defined to involve people—I presume you are talking also, if not more, about the federal proposals and how they are being handled—do you really think the people you meet are going to continue to want to be involved in the actual formulation of the Constitution? I notice the media now are beginning to take up the concept that the politicians have tried to consult and it is time they really did something here. We have had what we consider quite a successful constitutional conference. We have done close to, I would say, 1,000 hearings. We have likely received 4,000 briefs. What more? I guess

that is what I am asking. Am I reading the mood correctly out there or am I not reading the mood correctly?

2030

Mr Head: I think there is something in what you are saying. I think you are reading the mood, at least in part, correctly. But I think that many people are not aware of this kind of thing. I do not think that we were fully aware of it ourselves, as a matter of fact, and so in a sense we did not get around to looking at this thing until the last few months, so we have not had time for adequate discussion among ourselves.

But I also feel, as you suggest, that there are a number of people out there saying: “Look, this has been going on long enough. Let's get around to making a decision.” On the other hand, as I understand it, the government is committed to consultation. I do not know what the limits are on the consultation, but at least that seems to be the way the government is operating at this point.

I look at the question of employment equity and I understand the same kind of thing is going to happen there. There will be consultations, although in various parts of the province and in various cities of the province.

I think our problem is touched upon in the brief in the sense that the Canadian public itself is simply not fully aware of these things. Somehow we in the press and the universities and the public school system have not done an adequate job of educating the Ontario public and the Canadian public about the nature of the political system and how it operates. I have talked to people who have no idea how the system operates. They have no idea of what you mean by legislative committee or even the words “all-party committee.” So in a sense we are dealing with a problem which is very deep-seated and very greatly in need of correction.

Mrs Y. O'Neill: We hope our committee has done something to help that and we have been given every opportunity to show the Ontario public our work in that every sitting is televised. So we hope we have been part of the solution rather than part of the problem. Government is certainly not simple and, if anything, is more complex than it used to be. I just wanted to feel you out on that.

Ms Harrington: I also wanted to touch on your consultation process concerns here. You have stated that the one fundamental problem underlying the present debate is public ignorance and you have also asked for more time for dialogue among Canadians because it is so important. I certainly would agree that would be healthy. To get young people and everyone in society thinking about what our country means to us would be wonderful. I think most of us in the Legislature have tried to do that when we go back to our ridings, when we get an opportunity to talk, even bring greetings of three minutes to different groups. We try to point out how important the future of Canada is.

But I would like to tell you that it is difficult because people are very concerned about the economy and their jobs. They are saying, “This is our primary concern at the moment.” So I would like to bring that forward to you, that I think this is still a time to make decisions. There is a different attitude, I believe, within Ontario anyway, than

there was a year and a half ago. I think more people are listening and are trying to search for the importance of this country. I think all across the country people are realizing that within the next year or two, and probably even sooner than that, we will have to come to some conclusions, whether we like it or not. We cannot just keep on going the way it has been. I am just wondering if you had any reaction to that.

Mr Head: I would like to react to that. I think the job you are taking on and the consultations you are doing reflect the failures of the past. I think we are getting more now because of the fear of the country breaking apart. That is a relatively recent fear, I think, in terms of the overall educational system in Canada.

My kids go to school in Canada and they know very little about Canada, particularly in terms of what is really happening. What is the nature of the system under which we live? They learn a lot about the textbook view of the system, which is a very nicely glorified view, but the real meat of what happens in the political spectrum simply does not get told. So in a sense you are working in a situation where you are at a handicap and you are trying to make up for what should have been done long ago. But I would hope that out of this process would come some changes in the educational system, from the first grade on, maybe from kindergarten on up, to talk about the way this system operates and to look at it in a creative way, not just rote learning that we do now, but to say: "What are the problems here? What are the issues here? What are the advantages here? How can we make this a better society?" This requires, I think, teaching children and young adults and adolescents to think about things themselves.

The system has changed a bit since I have been in Canada since 1965, but it has not changed enough, and a lot of what I see today is precisely what I did not like when I came here in 1965 or what I left in the United States when I left there. I learned nothing practically about the real nature of politics in school, and that was in the States, and my children are learning the same thing here.

So, in other words, I am saying you are running with a handicap, and I wish you the very best of luck.

Ms Chiba: Just to extend on that, I am a third-generation Canadian, and I have to say that I do not think I learned enough about Canada when I was growing up, but then those were different times. Being a Japanese Canadian, I am also sure you are familiar with the redress issue. We did not grow up learning about the truth behind the particular government policies at that time, and I think that just goes to show how the evolution of a fairly young country, relative to other countries in the world, is developing now, and that is why we say we are in a transition.

There are many divisive things occurring at this point, regionally, culturally and economically. These are all impinging on the whole identity of being a Canadian, whether you are a new, old or an indifferent Canadian. But let's look, for example, at the Senate. Do people know how the Senate came to be in Canada, that you still have to have a certain amount of property in order to be a Senator, that you, at one point, had to be from a particular culture or

religion? These all have historical background, and when you are going to change them, you do not change them in the abstract. They change incrementally, and they have to change with understanding. For those people who are going to be affected—namely, all of us, because the Constitution speaks to all of us—it has to mean that each of us has some stake in it.

As Wilson said, perhaps we have operated at a handicap. We are not pointing the blame at any one particular person or party or government. We are simply saying that there seems to be a lack of communication here, and we thought it would be worth while to point that out.

Mr Dharmalingam: I would just like to add a little bit to that, and I would like to refer back to the questions that were addressed by Mrs O'Neill and also by Ms Harrington.

With respect to how the community thinks and how people think, it is a very diverse answer, and I think you have heard some of the answers around the table. I, too, am a first-generation Canadian, and a thoughtful first-generation Canadian is concerned at the lack of information and lack of time to participate in the process. That lack of time and information can probably be laid at the feet of the political process as well as our media. I think it is very unfortunate that our media see their role purely—and unfortunately, this is perhaps a truism—as a profit-making exercise to provide information based on how interested they think their mass public is going to be in what they have to talk about. The number of people who are going to comment on this process and who are going to learn from it is minor. There is no question about that. There is a great deal of apathy out there.

Second- and third- and fourth- and many-generation Canadians probably feel that the process has gone on far too long and they have had their minds made up well in advance as to how they saw it. The issue was perhaps much more simply divided between the aboriginal groups and what we do with them and the francophone-anglophone issue.

As for the timing of jobs and a very down economy, I think that is very unfortunate. The timing of the whole constitutional process and revision has unfortunately coincided with a period in which the average Canadian, particularly those 10% or more who are out of work, could really care less about what is going on. But I do not think that should deter any of us from doing what you are doing here, and doing it well and doing it with patience.

The Acting Chair (Mr Winninger): Are there any further questions? Hearing none, I would like to thank you again for your presentation and for coming here tonight to share your views with us. It was most interesting.

Mr Dharmalingam: Thank you very much for the opportunity. I enjoyed it.

2040

ONTARIO REAL ESTATE ASSOCIATION

The Acting Chair (Mr Winninger): Last, we have with us the Ontario Real Estate Association. I would ask you to come forward, please. I understand we have with us today Mr Edwards, Mr Watkins and Mr Flood. The clerk

has circulated your materials among the members of the committee. Whenever you are comfortable to do so, I would ask you to begin.

Mr Edwards: My name is Jamie Edwards and I am vice-president of the Ontario Real Estate Association. On your right is Mr Flood and on your left is Mr Watkins.

The Ontario Real Estate Association represents over 47,000 individual realtors and 48 local boards throughout the province—we believe the largest single-industry association in Ontario.

This evening I would like to focus on property rights and the Constitution and give you a few reasons why Ontario realtors believe that entrenchment of the right to own and enjoy property is important and beneficial to all Canadians. I also want to share with you a little background on the property rights issue and the role our association and our national body is playing in the property rights debate.

Let me make one point up front. We have nothing to gain personally in this debate. We do not believe that property rights entrenchment will have any direct effect on our incomes or on our ability to earn a living. We are here because we have seen and documented instances of property rights abuse and we believe that our citizens deserve better protection than they have at present.

The right to own and enjoy property goes back to the Magna Carta in England in 1215 and the English Bill of Rights in 1627. It is in the United Nations Universal Declaration on Human Rights, signed by Canada in 1948, and it was part of the Canadian Bill of Rights, signed in 1960.

Property rights were included in the original draft of the Canadian Charter of Rights and Freedoms for 1991 but were dropped from the final document as a result of political manoeuvring. At the time it was thought that the process of amending the charter would be relatively easy and straightforward and all were assured that property rights would be included in the next round of amendments. Mr Trudeau supported it. Mr Broadbent supported property rights for home and family farm owners. Mr Mulroney still supports it.

As we now know, our Constitution and the amending process have proved to be anything but easy to change. The point I want to make here is not political but historical. The inclusion of property rights in the supreme law of this country and many other countries is the norm rather than the exception. It is a right we already thought we had and we always thought we had. It is a right we thought was a fundamental right, like the other rights included in the charter. It is not new, not revolutionary and not threatening.

In the early 1980s the Ontario Real Estate Association commissioned two studies, *Lost Ground* and *Losing Ground*, which documented the growing number of intrusions by local, provincial and federal governments on individual rights. We published case studies outlining how the loss of those rights hurt ordinary citizens of Ontario. I have brought a few copies of these studies with me tonight. I would be glad to share them with you.

These document the problems of real people, people who have lost their homes, their savings, their roots and their dignity at the hands of those who use their powers in an arbitrary and capricious manner. That is why entrenchment

is important. It gives property owners, and that means not just real estate, protection and recourse from abuse by governments.

Our concerns about the erosion of property rights and the lack of charter protection led us to institute an annual event originally called Private Property Week and today called Ontario Home Week. During that week the Ontario Real Estate Association and its members across the province celebrate the freedom to own real estate and we explain the importance of this right to all citizens of Ontario. I am proud to say that the OREA was among the first to campaign for entrenchment of property rights in Canada.

Today our campaign, which has become national in scope, is being led by the Canadian Real Estate Association in Ottawa. They have done extensive research and analysis on the effects on tenants, women, aboriginal peoples, provincial and municipal governments and other interest groups of including property rights in the Constitution. Copies of their latest submission have been provided to the clerk. It is their conclusion, and one we support, that none of these groups would be disadvantaged by the inclusion of property rights in the Constitution.

We do not believe that property rights entrenchment means the end of rent control. We do not believe it would allow you to turn your land into a garbage dump. And we do not believe it would give land owners the authority to pollute the environment at will. Frankly, we believe those types of comments do not merit serious debate; the sky is not about to fall.

Any entrenchment of property rights in the Constitution would still be subject to section 1 of the charter, which provides that all rights are guaranteed subject to "such reasonable limits, prescribed by law, as are demonstrably justifiable in a free and democratic society." In simple terms that means that governments can still govern and can still enact laws, that society will still come first, and that existing laws will be respected. We believe that including property rights in the Constitution is good for all Canadians, and they agree. An Environics Research public opinion poll released October 15, 1991 indicated that 71% of Canadians and 65% of Ontarians support a constitutional rights amendment on property rights.

In closing, I want to stress that we have no interest in depriving any group or sector in society of any of their rights and freedoms. Mr Chair and committee members, our association believes that you cannot enhance individual rights by taking away the rights of others, but that by enhancing individual rights you enhance the rights of everyone.

I would like to now ask my colleague, Gaylord Watkins, to say a few words. Gaylord is a lawyer with the firm of Watkins and Co in Calgary and is an expert on constitutional law and property rights.

Mr Watkins: It is an honour to be here to talk with you about property rights and our charter. I am the principal author and also the researcher of the document entitled *The Flawed Charter*, which has been given to your clerk. What I am going to attempt to do this evening, rather informally I hope, is to review a couple of areas for clarification to perhaps give you a better grasp of how property rights would fit into the charter, to speak briefly about some of

the implications of having property rights there, and then hopefully to respond, as I am sure Jamie will too, to questions or concerns you may raise, as I am sure you will.

First, I think we need to look upon the absence of property rights as being unusual, indeed perhaps perverse. Property rights are viewed by members of our society generally as something they assume are there already. They see property talked about, they hear about disputes about property. For the most part, of course, those disputes are disputes between private individuals, and they are regulated, reasonably well I would say, by our common law and by statutes that apply to those kinds of questions.

What we are concerned about here, though, is the relationship between government and the individual, between government and the person or party who believes he has some rights that relate to whatever this thing called property may be.

In terms of the charter being incomplete without property rights, we are talking about the continuation of a situation where you as legislators still are supreme, where you continue to have the capacity in law—not necessarily the inclination, but the capacity—to pass legislation which would take away property, which would take away rights of use of property, which would limit the uses that people may put their property to, and to do so without necessarily requiring fairness or fair procedures, and to do so without requiring fair or just compensation being paid.

There is some confusion, I think, in this debate over whether there should be property rights in the charter. Property rights in the charter will be no different than any other right in the charter, and I am sure you have had people discuss this with you before. The charter does not create or make absolute any of the rights that it protects.

2050

Jamie has mentioned to you section 1 and the “reasonable limits” clause there, and I am sure you have been back and forth across that a hundred times, if not more. At the same time, you have had discussions, I am sure, on section 33 and the “notwithstanding” clause, which in essence is the clause that reserves to our legislators and to our parliamentarians the sovereignty to do what you will. In this instance, using section 33, you would have to say specifically what you were doing, that you were in fact passing laws which would not be subject to rights in the charter, and that, notwithstanding the charter, the legislators had determined it was a good thing for society in general to have such a law, even though it may conflict with certain rights protected in the charter.

We also have in section 7 of the charter a recognition of certain rights. Sometimes people have talked about putting property rights into section 7, along with life, liberty and security of the person. Of course, that section as well does not make those rights absolute. Indeed, it says that you can take those rights away, or legislation can take those rights away, provided you do so in accordance with what the drafters of the charter nobly expressed as the principles of fundamental justice. Some lawyers and legal academics are still scratching their heads as to what fundamental justice is. I think I view it as something that would at minimum be equivalent to the rules of fairness or natural

justice. There may be something more there; we are not certain.

The realtors’ associations across the country, the Ontario Real Estate Association, and the Canadian Real Estate Association, like the federal government, have not at this time determined where exactly property rights would go in the charter. But they have decided that there are two fundamental elements they would like to see protected by the charter.

They would like to make certain that there is fairness in any taking of property rights or limitations on the use of property, so a due process requirement would be part of that. At the same time, if there was a deprivation, there would be just compensation paid. All of that, of course, would still be subject to section 1 and the “reasonable limits” provision, which permits governments to pass laws and legislators to enact legislation which would in effect take away property rights in circumstances where that was demonstrably justifiable and at a reasonable limit, without paying compensation, and indeed without following fair procedure.

So we are not talking about any kind of absolute recognition, of putting property on a different pedestal, or of having it at a higher level of protection. It would be a right just like any other right—a right, a fundamental right perhaps, called as such, but no more fundamental than the other rights in the charter. Indeed, if it was protected in a section by itself it would take on a character which may, in fact, evolve over time. It may not appear in the future to be a right which just protects real estate as property but may, as I will get to later, protect something more than just real estate or personal property or all the other things that we commonly think of as property.

I am often asked by people: “Why are you worried about property rights? Society seems to be getting along fairly well without having property rights entrenched in the charter.” I guess for some people that is so, but for numbers of people, and we think significant numbers, that is not the case. I think the documentation being provided by the Ontario Real Estate Association touches upon and describes in some detail cases where there have been infringements or taking of property for which there has not been compensation. It has not been fair. It has been rather arbitrary. Indeed it will be hard to fathom in these cases that in fact a reasonable limit was involved.

Let me just sketch briefly what we have in terms of existing legal protections of property. I will try to do it briefly because you have been at this for a long time today and I know there are time limits for you. We have certain presumptions that the courts make. We call them the common-law presumptions. They are really principles of interpretation. What they essentially say with respect to property is that the courts would only interpret a statute as taking away property rights without compensation if there was express language to that effect, or if there was no other reasonable interpretation that could be made. Putting it another way, a statute cannot take away property without compensation unless express language to that effect is present.

Those presumptions usually arise when the language of the legislation is ambiguous or when the literal interpretation would lead to an illogical, unreasonable or perverse result. So while we would like to think that it is always something that is going to be applied by the courts, it will not necessarily even be activated unless you, as legislators or the drafters of laws that you have enacted, have not been altogether clear in the language you have used.

We also have certain protections from the procedures by which property is taken, by the rules of natural justice I referred to before and the duty to act fairly, by common-law principles which have evolved in the courts. There we see these principles being applied to ensure that if property is taken, it is done in the way least harmful to the person or parties affected.

That does not apply, though, to quantum. It does not apply to the situation where just compensation is not paid. If that is not provided for in the statute, even though there may be a duty to act fairly, that duty as of yet has not been expanded in terms of interpretation to include the obligation to pay just compensation.

Then of course we have expropriation laws, which many people believe seem to cover the waterfront. In effect, they do not. They only cover those situations where the taker may be bound by the statute to follow the expropriation law, or where the taker has the option or the opportunity to bring himself under the expropriation law so that it does apply. It does not at all preclude the Legislature from passing other laws which take property independently under the Expropriations Act. Your parliamentary sovereignty, your legislative sovereignty is still there. So as far as expropriation laws go, in terms of their procedures, in their ways for determining just compensation, I do not believe this association, or indeed the national association of realtors, really has a problem with that.

So we have these three elements—expropriation laws, due process and fairness, and doctrines or principles of interpretation—that attempt to cover the field. But in fact they do not. There are areas where it is still possible for arbitrary laws to be enacted which take property. It is still possible for these things to occur.

What I would like to do now is to make a comparison. I would like to take you briefly to the United States. I would like to talk a bit about the protection of property rights there and the extent to which that has been a burden, if it has been a burden, to the passage in that country of a whole variety of environmental protection laws, matrimonial property laws, heritage protection laws—all of the laws that some people are concerned might be affected by property rights being entrenched in the charter.

The Acting Chair (Mr Winninger): I should note at this point that we only have 10 minutes left.

Mr Watkins: I see. Did we count the time from the time that we actually began?

The Acting Chair (Mr Winninger): Yes. We started by my reckoning at 20 minutes to 9. It is 9 o'clock now.
2100

Mr Watkins: I will be brief because I would like to leave some time for questions.

The Acting Chair (Mr Winninger): Certainly. That is up to you.

Mr Watkins: In the United States, as you are probably aware, both the fifth and the 14th amendments to the Constitution protect property rights. Basically they say no person shall be deprived of property without due process of law, nor shall private property be taken without just compensation.

One has to remember that in the United States, in the framing of their Constitution there was recognition—indeed, this is recognized in the preamble of the Constitution—that the citizen had certain inalienable rights, rights that were not in effect brought under the Constitution, that remained outside the Constitution as part of the social compact or agreement between the individual citizen and the government to form the state. Included among those inalienable rights were the right to liberty and the right to property.

We have to remember that when we are looking at how the US Constitution is interpreted. The courts there have several kicks at the can. They can have a kick at the can by saying law should not touch property rights, because it is inalienable; it did not get into the Constitution. Or they can say—second kick—“Let’s look at this from the point of view of the fifth and 14th amendments. Was there due process and is there fair compensation or just compensation being paid? If not, we have a problem.” What has occurred—the law itself would be unconstitutional.

For a number of years, and I would say up until the Roosevelt New Deal period, which, as you recall, would be the 1930s—we are now talking the middle 1930s in the United States—some courts, including the US Supreme Court, used this situation to overturn laws which many people saw as being socially beneficial. But once the hurdle was jumped in 1935, there has been no return. Indeed, I have seen only one recent case, and that at a state level in California, where there has been a significant overturning of legislation, whether it is state or federal, using the property rights arguments.

There is a ream of jurisprudence, of cases which have consistently upheld zoning laws, heritage protection laws, many different kinds of legislation and indeed environmental laws, which are much more onerous than we have in this country at any level of government. Yet property rights there have not served to make that an impossible situation.

The odd thing about the US Constitution is that it has no equivalent to our section 1. There is nothing in the US Constitution which says reasonable limits can override guaranteed rights. Yet the courts there, because courts realize that society still has to evolve and still has to govern, have evolved under what they call the police power; doctrines which permit them to say, “If it’s for the public good, if it’s for public health and it’s for safety, then there could be a situation where there would be an erosion of property rights without compensation being paid.”

For those people who say to you that property rights have been a problem in the United States because they have precluded remedial legislation, I think the answer to that is, “Name us the case where it has happened in the last 50 years,” because it has not.

I want to touch very briefly on one case in California which is similar, actually, to a situation which has occurred in this province. A church had a small recreational property on which it had a summer camp beside a river. Unfortunately, the camp burned down and when the church applied to rebuild, it discovered that since it had purchased the property a conservation authority had in fact determined that the camp was built on a floodplain and that therefore, as there was now a prohibition against building on the floodplain, even though there had not been a flood there for 70 years, the church could not rebuild.

As a result, there was no value left to the property. The court at the state level held that unless they could go back and look at that floodplain restriction and prohibition again, there had been a taking of property, and since it was for the general public good of all people who lived in the river valley, it was equivalent to an expropriation and therefore there should be just compensation paid. In any event, I have probably gone on for too long, but if you have questions, please ask them.

The Acting Chair (Mr Winninger): Before we entertain questions, and I do have at least one person on my list, did Mr Flood wish to add anything very briefly?

Mr Flood: Not at this time.

The Acting Chair (Mr Winninger): So far I have Mr Malkowski on my list, so we will start with him.

Mr Malkowski: We have heard from a lot of people, especially from the disabled community who have some very strong concerns about property rights in the Constitution, the right of access into buildings, per se. Would property rights prohibit access to buildings for disabled people? I would like to get your feedback on that.

Mr Watkins: No, I do not think it would. We have to look at whether people generally view these kinds of access rights as being something which is reasonable in the circumstances. We only have to go to virtually all cities of this country and look at the redesign and reconstruction of sidewalks to permit ramps for wheelchairs virtually at all intersections now to understand that in our society we have come a long way. I think the courts would view that as being a reasonable requirement and a reasonable limit on the rights which might otherwise exist of the operator of a theatre or a restaurant or whatever to control access to his facility.

Mr Malkowski: I would like to follow up on your point. Once property rights are entrenched, could the owners of the property not challenge it in court to say they do not have that requirement? For example, if people want access, are you saying that section 33 could be used to override city bylaws or municipal or provincial bylaws, or what is your sense of that?

Mr Watkins: Right now there are in many municipalities bylaws that you are aware of which require certain access facilities for handicapped people to be built in public buildings. I must say that what has happened actually, in my own experience, is that many builders are in fact exceeding the requirements for these facilities and doing more than they would otherwise need to do according to law.

Your question really relates to a situation where a builder or an operator of such a building did not want to

put in these facilities and felt that the zoning requirement might be challengeable under the property rights provision of the charter. I think such a builder would have an uphill battle. He would have to show that the law itself was not a reasonable limit which had been arrived at, which was not demonstrably justified in a free and democratic society. I cannot believe in our society today that any judge would accept that kind of argument.

The builder's lawyer would also have to look at what has happened in other countries where there are property rights entrenched in their constitution, such as the United States. There I am not aware of any successful challenges by a builder to get around that kind of requirement in providing access to handicapped people. In fact, the cost of such challenges is fairly prohibitive, and indeed we have to remember that usually the party that is defending the validity of the requirement would be the government involved. If you are trying to sue the government to have a law turfed out because it is not constitutional, you are facing a rather expensive process, and that in itself, I think, will discourage litigation.

Mrs Y. O'Neill: Thank you, gentlemen. I presume you are doing quite a bit of public speaking, because this is not the majority opinion that is expressed to us at our hearings. Maybe that is because people do not feel as comfortable as you do with the vocabulary. I have a feeling that some of them feel it is an Americanization policy as well, and we are getting quite a bit of resistance to anything that even looks like that.

I have not had a chance of course to read your presentation yet, but you did say two or three times that it is not just real property, and yet I listened and I listened and I would not be able to recollect now what it is. There must be some limitations. You gave examples of kinds of laws that would not be overtaken. I would like you to be a little more specific because I really do think your presentation will be relatively unique and certainly much more focused than anything we have had to this point on this subject.

Mr Watkins: Thank you. We must have planned this before, because that was one area which I did not get to because of the clock, and I appreciate the question. I agree with you at the outset that there is a significant amount of misunderstanding of property rights, what they mean in the charter and what they mean outside the charter. In essence, I think it is almost a technical question to a great degree. However, as Jamie has mentioned, we have seen property rights included in the 1960 Bill of Rights—perhaps not the constitutional effect, but it has been there. We have seen them in the bills of rights of a number of provinces. For example, Alberta has an entrenched property right, for whatever good it will do. They are not very useful in terms of using them to challenge anything really.

2110

I know the Universal Declaration of Human Rights recognized property, and perhaps I will lead into the point you had raised about what property is. What other definitions, what other things might become property? I would like to refer to another part of the Universal Declaration of Human Rights, which is really an expanded view of security of the

person, and I am sure the language I am going to read to you is under consideration by the current government of Ontario in terms of its conceptualizing and thinking about a social charter and what social rights might be included in the charter.

This is section 25 of the Universal Declaration of Human Rights: "Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family,"—this is only in "his" kinds of words here; this is the way it is written—"including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood and circumstances beyond his control."

That kind of language is what I would anticipate will be coming out in terms of any concrete proposals that are made about the content of a social rights aspect or a social charter that would go along with our regular charter.

Strangely enough, the inclusion of property rights in the charter may, in the end, have a similar effect if we do not define "property" in the charter or restrict the definition of "property," let's say, to real property or real estate. I say that because of the evolution, both in Canada and the United States, of the courts in looking at, for example, entitlements. An entitlement is an expectation. It is what the law tells you you will get if you qualify and meet certain criteria. I guess an expectation is what a woman has in a marriage in terms of her share of matrimonial property. On the breakdown or at the end of that marriage, under the existing law in this province and in others, there is a deemed 50% ownership interest, a property interest, in the matrimonial home and indeed in other property acquired by both of the spouses during the course of the marriage. So I would see—and the courts have already done this to a degree in Canada and are definitely doing it in the United States—property, in terms of the charter protection or constitutional protection, as encompassing these kinds of expectations.

Property includes, as well, not just the interests a landlord has in an apartment building, but also the interests that tenants have in an apartment building if they are going to be dispossessed or if they are going to be affected by a taking by government.

It also, I think, would include pension rights, unemployment insurance benefits and expectations of receipts

of these interests. Welfare benefits would probably become included as part of property if left to be broadly defined by the courts.

Some people will say, does that really have great significance? Apart from its symbolic significance, it may initially not have a substantial impact because we already have, in most of the laws that govern the giving of benefits for welfare purposes, certain remedies which recipients or potential recipients may have if they feel they are not being treated fairly or if arbitrarily they are being cut off. It may not change things that much, at least in the initial term, but I think the symbolic value of recognizing that property is what society perceives property to be, as viewed through the judge's eyes—you are all going to say: "Judges are those people who walk backwards down the street because they are only affected by what has gone on before. They have a hard time being prescient and looking to the future." None the less I think it would be an important view.

It would not, of course, lead in the fullest extent to creating positive obligations on government to provide social welfare, for example, as some people in reading the section from the Universal Declaration of Human Rights that I read to you, would interpret that to provide. That, not so succinctly, is my answer.

The Acting Chair (Mr Winner): Unfortunately our time has run out, but I would like to thank you for a most illuminating analysis of property rights. As Mrs O'Neill commented, it was both unique and focused and, to my recollection, the first presentation that has dealt substantively and extensively with property rights. For that, I thank you on behalf of the committee and we will certainly study the brief of the Canadian Real Estate Association with interest.

Mr Watkins: I should say that the Ontario Real Estate Association was really the forerunner in this field, I think going back into the 1970s. Although my principal involvement is at the national level, I think we have to recognize the contribution the Ontario association has made to this as well.

The Acting Chair (Mr Winner): Thank you again. As this completes the agenda for tonight, I declare this committee adjourned until next Wednesday at 3:30 pm.

The committee adjourned at 2117.

CONTENTS

Monday 25 November 1991

Association canadienne-française de l'Ontario	C-1537
Ontario Teachers' Federation	C-1540
Urban Alliance on Race Relations	C-1543
Ontario Real Estate Association	C-1546

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Wednesday 27 November 1991

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Le mercredi 27 novembre 1991

Select committee on
Ontario in Confederation

Comité spécial sur le rôle de
l'Ontario au sein de
la Confédération



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Table of Contents

Table of Contents for proceedings reported in this issue appears at the back, together with a list of committee members and other members taking part.

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Table des matières

La table des matières des séances rapportées dans ce numéro se trouve à l'arrière de ce fascicule, ainsi qu'une liste des membres du comité et des autres députés ayant participé.

Il existe un index cumulatif des numéros précédents. Les renseignements qu'il contient sont à votre disposition par téléphone auprès des employés de l'index du Journal des débats au (416) 325-7400.

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A partir du début de la deuxième session de la 35^e législature, les pages et les numéros du Journal des débats seront de nouveau numérotés par session. La numérotation du Journal des débats correspondra donc à celle de Feuilleton et Avis et de Procès-verbaux, ainsi que celle des autres publications parlementaires au Canada.

Depuis deux ans, le Journal des débats était numéroté par année civile. Avec ce système, la numérotation des numéros et des pages recommençait au premier numéro de l'année civile, quelle que soit la session ou la législature.

Avec le nouveau système, la numérotation commencée en janvier 1991 s'arrêtera à la dernière séance de la Chambre et des comités de l'actuelle première session. Une nouvelle série commencera le jour de l'ouverture de la deuxième session et des sessions suivantes : numéro 1, page 1. Les rapports des comités seront également numérotés à partir de la première séance de chaque comité pour une session parlementaire donnée.

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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON ONTARIO IN CONFEDERATION

Wednesday 27 November 1991

The committee met at 1637 in room 151.

The Vice-Chair: We welcome all the people watching and the people we have here today with us to hearings before the select committee on Ontario in Confederation. Just as a bit of a recap, this committee has been convening this fall and listening to various people and organizations coming and presenting to us specifically on some questions or concerns around the whole constitutional debate.

UNITED SENIOR CITIZENS OF ONTARIO

The Vice-Chair: We have with us this afternoon Mr Wallace Connon from the United Senior Citizens of Ontario. He happens to be the second vice-president of that association.

Mr Connon: As the chairman said, I am second vice-chairman for the United Senior Citizens of Ontario, commonly called USCO. I am speaking to you as a representative of the United Senior Citizens of Ontario. We are a grass-roots organization that was started in Five Oaks, near Paris, Ontario, in September 1956 by a small group of seniors from southern Ontario. Today we speak for some 300,000 senior citizens living in Ontario. We are a voluntary group providing information, education and advocacy on behalf of older adults in Ontario. I am therefore coming to you as a layman rather than a constitutional expert. You have already had many constitutional scholars appear before you who are far better qualified to enunciate the salient points which go into making a constitution.

I sometimes fear that when we approach the important task of putting together a constitution we invite people who come with a chip on their shoulder, people who are unhappy with the existing government of the day or people who just want to be heard, without the study that should rightfully go into such a task. It is my hope that I do not fall into any of these categories. I believe I am safe to say that the USCO approaches this question with a sincere desire to ensure that the Canada we turn over to our progeny will be a fair and strong nation. This represents an enormous task and responsibility that falls on the shoulders of all Canadians.

The history of Canada is complex. In most cases our forefathers came to a land that was already settled and enjoying social values established by a native population. The new settlers were divided into two basic ethnic groups, the French and the British. It was a period when imperialism was dominant. The French society settled mainly along the shores of the rivers in a pastoral culture. The British, on the other hand, had more of a tendency to be tradesmen and businessmen. Upper Canada became mainly British while Lower Canada remained French.

Both of these cultures retained their ways of life until after the First World War. Quebec did not change as readily as the British portion. Having strong Roman Cath-

olic ties, larger families were encouraged and the children tended to study religious training or professional pursuits, such as medicine, law and academia. The British sector tended to be more business-oriented and, following the Second World War, actively participated in developing new techniques applicable to the business community, ie, technology. A case in point is the evolution of the computer.

It seems to me that the real change in French culture was sparked by the visit of General Charles de Gaulle. "Vive le Québec libre" awakened in the Québécois the desire to take their rightful place in the modern world of business and a tendency to place the blame outside of Quebec rather than accepting the fact that they had chosen the lifestyle they have previously enjoyed.

The British, on the other hand, were seeing enormous changes taking place in their society. Immigration quotas had increased in the postwar period and we saw the mosaic pattern of our society developing. This resulted in the dilution of the British culture, and although we proclaimed with some pride the mosaic pattern that had developed, later years have tended to make a vast area of Canada an indistinct society as opposed to Quebec being a distinct society. We have no hesitation in accepting the concept that Quebec is a distinct society.

So far I have spoken only of the French and British evolution in Canadian society, but a very important part of our society is our native population. These people have been maligned and misunderstood since the days of Christopher Columbus, when they were referred to as Indians. Here was a civilization, which had grown and developed in harmony with nature, faced with intruders from a far-off land who came with entirely different concepts of the role of mankind. Our history books to date have been unfair to the native population. Up to now, we have treated them as though they were incapable of their own self-government. As these native people have become more articulate in the white man's language, the white man has reluctantly come around to the view that these people do deserve self-government. This belief is firmly held by the USCO.

The USCO, which is made up of senior citizens of the province of Ontario, has developed, through its members, a strong bond and affection for Canada as a nation. The accident of birth dictates our ethnic origin. We trust that when all the debating and submissions of briefs are completed, Canada will emerge a stronger and better nation, a nation based upon mutual understanding and acceptance of cultural differences.

We regret that the Quebec government has felt it necessary to avoid participation on an equal basis with the rest of Canada, because this creates a serious imbalance, whereas the part of Canada outside of Quebec spends most of its time and effort in trying to interpret and anticipate what will satisfy that province.

The question of private property is somewhat confusing. There is such a vast variation in types of property, much of which is, for want to a better word, "imaginary." If one owns a lot or farm, what does one actually own? Is it the soil, the space or the mineral rights of that property? What can he do with the property or farm? He may find that he cannot build a house because it is a commercial zone or, on the other hand, cannot establish a business because it is declared residential.

In addition, he cannot take the land that he possesses to another province—say, British Columbia—if he wants to move. So what does he really own? If he were to purchase a car for, say, \$20,000 and moves it off the lot into the street, he could possibly lose \$2,000 in actual value, and depreciation will further reduce the value to where it eventually becomes worthless. It seems to me that inserting a nebulous clause regarding private property has no real meaning in a constitution. I can see more justification in inserting a clause ensuring social programs.

The fragmentation of Canada should Quebec's referendum result in sovereignty-association or independence would render Canada vulnerable to possible American takeover. This may not necessarily be a violent annexation of Canada, but even a mutually acceptable association with our American friends would be a sad day indeed for Canada. Moreover, Quebec itself would not be immune to such a takeover. All of which makes one wonder if it is all worth while.

This thought seems to have been recurring in many other remarks that have been heard during the debate. We must seriously consider whether we can jeopardize our medical program or our judicial system when embracing the American tradition. The Americans fought a civil war over the question of secession. Are the germs of civil strife contained in the making of a new constitution? We must be cognizant of the danger that lurks in these deliberations.

We have heard a great deal concerning Senate reform, particularly in western Canada. Much has been said about a triple E Senate. One cannot help having grave doubts that any reform of the Senate will be very difficult. The Senate has been discredited through the years because of political partisanship. Each outgoing government seems to think it is good politics to fill the vacancies with its political friends, thus making it hostile to a new government with views opposed to those of the outgoing government. On many occasions it seems that the Senate is pasture land for political warhorses. In a recent instance, because the Senate was prepared to block legislation enacting the GST, our government called on Her Majesty to allow the appointment of eight senators to ensure passage of the legislation. This surely constituted complete disrespect of this venerable legislative body.

There is already much controversy over how an elected Senate should be elected. Smaller provinces want to have an equal say in the election of the Senate regardless of population differences. This would seem to be an insurmountable hurdle. Then there is the question of how the vote would be tabulated—ie, proportional representation—which will require the creation of multimember constituencies, the use of party lists or single transferable voting

systems. It seems improbable that a harmonious resolution of this problem could be worked out. Many seniors now believe it might be more practical to consider the abolition of the Senate, thus saving the country a large expenditure in the years to follow.

Previous mention was made regarding the incorporation of a Canadian social charter. The USCO would welcome the inclusion of such a provision. This would ensure that whatever part of the country they came from, Canadians would be entitled to the benefits derived from such a charter. We realize some of the provinces are reluctant to include this province, but its importance cannot be denied. This would not be inconsistent with the free market concept between provinces.

It is not as though our social programs have not already been threatened. The USCO is proud of the fact that, along with other seniors' groups, we were able to persuade our government to back off the de-indexation of our old age security pensions. We were not quite as successful when the clawback legislation was enacted. Small wonder that the USCO supports the inclusion of a social charter in our Constitution.

1650

The main thrust of the USCO's concern is provincial, but when federal policies affect our seniors we have to become involved. We are affiliated with the National Pensioners and Senior Citizens Federation, which represents and works on behalf of seniors in Canada presenting their issues to the federal government. Moreover, we co-operate with other senior citizens' groups in matters of common interest to seniors. We are ever mindful of the fact that seniors have played a very important part in the development of this great country we call Canada. It is our fervent desire that Canada remain a unified and enlightened country so that the dedication and devotion of our forefathers will not be in vain.

Canadians have enjoyed a proud heritage, and although we have a tendency to be reticent in proclaiming our pride and loyalty, those feelings are very strong. It is unfortunate that we are going through a serious recession while these discussions are taking place, because our views are liable to be influenced by personal hardships, thus preventing us from adopting a more objective point of view.

On behalf of the United Senior Citizens of Ontario, I want to thank you for this opportunity to participate in these important discussions.

The Vice-Chair: Mr Connon, I thank you very much. There are some questions on the interesting brief you presented to this committee. We will start off with Mrs Harrington.

Ms Harrington: I thank you very much for coming before us and telling us exactly how you are feeling. I do not think we have had a brief that is quite so straightforward.

I had a question on page 4, the third paragraph down: "We do regret that the Quebec government has felt it necessary to avoid participation on an equal basis with the rest of Canada because this creates a serious imbalance, whereas the part of Canada outside of Quebec spends most

of its time...." I did not quite get the sense of what you were saying there.

Mr Connon: My feeling is this: I never had much of a chance to go over each thing in detail with the USCO as such. I got main points from them, but what I am coming at is that it is not the people of Quebec who I say are not participating; I think they are. The government has sort of felt as though it was burned by the Meech Lake accord, I guess. They have suggested that it is better to stay out of the conferences with the premiers. They are not completely divorced from the discussion, but they are not ready to come in and sit with all the provinces.

Ms Harrington: So you are talking about a fairly recent thing, not a historical thing.

Mr Connon: That is right.

Ms Harrington: You mentioned a couple of times the importance of the social charter to you and your constituents. We have had a fair amount of discussion on this. Can you see difficulties in implementing this idea of guaranteed social benefits across the country?

Mr Connon: I do not think we can lay down actual details. General principles would be all that could be included in the charter, and recognizing the general principle that we do in fact have certain charter rights that have what we call sacred trust, if you will. They should be respected as such, and in order to ensure it we have them covered.

Ms Harrington: It would make this country unique, that people really believe in it.

Mr Connon: I beg your pardon? I did not get that last word.

Ms Harrington: It is something that I think a majority of Canadians believe identifies us as Canadians that makes us unique, that we really believe in our social programs. I will pass to my colleagues.

Mr Curling: Thank you very much. Reading this, I can see the true Canadian coming out in you. These are the Canadians I like to associate with. I am not talking about the seniors; I am talking about your heart and what went into this. As my colleague said, you spoke straight from the heart. I welcome a presentation like this.

Although you make apologies about the fact that you are not of all the legal, constitutional minds who made their presentations, and we have heard enough of that, it is good to hear that we have heard the other part of it.

I note one of the concerns that Canada has now, and I do not want to say a negative or a positive concern, but the fact that what they call baby boomers are growing up now and becoming somewhere around seniors, like myself.

The Vice-Chair: Excuse me, I was a baby boomer.

Mr Curling: The Vice-Chair here may be the echo of the baby boom. He is much younger than I am.

The concern, then, in addressing many of the issues of Canada may concentrate around that area. I notice that as you cautiously talked about the social charter, you said it is not as if we have not addressed that concern. It has been addressed, and I am grateful to the fact that this country addressed quite a few of those social charter concerns without it being mentioned before.

Then you said that when it comes to things that affect the seniors, the indexing of pensions and all that, you get rather concerned. I would like you to comment on this: Do you feel that much has been done with regard to addressing that bulk, as I talk about the senior citizens? We are going to have to deal with a lot of that and how we plan our economy in many years to come. Do you think the Constitution should focus in that direction?

Mr Connon: I think it has to ensure that we keep some kind of focus in that direction.

Mr Curling: Let me make a quick addition: Or do you feel we should get a lot more immigration in this country to sort of balance that lump, younger people?

Mr Connon: It is a matter of how fast we want to absorb and how fast we can. That is why I say a recession is a bad time to try and—it distorts everything you are trying to figure out. You really cannot give a good, objective view of things until you get away from the recession, a little bit, anyway. It does distort. As I have said before, I would not want to try and be specific on the social charter.

Take my own case. When I retired back in 1977, I retired with what I thought was a nice, comfortable pension, and here in 1991, if I had not had the support of the old age security and the Canada pension and so on, I do not know just how we would be surviving. I thought we were all right in 1977. In 1991 I do not know what lies ahead. You cannot prepare for that sufficiently anyway. No matter how hard you prepare, you end up wondering if you prepared enough.

Ms Carter: Thank you for that straightforward presentation, as has been said, which I think calls a spade a spade in a way that maybe some other people have not been willing to do.

I am not quite clear regarding your ideas on Quebec and the mutual relationships. You do see Quebec as distinct. You go into the historical basis for that, and you say we want a mutual understanding and acceptance of cultural differences.

Then on page 4 you go on to say that you feel there is an imbalance, and that you see Quebec as a very unified society, where the rest of Canada is a mosaic. I am not sure that is absolutely true. There are immigrant groups within Quebec. Although they obviously get absorbed into a French-speaking society whereas here they get absorbed into an English-speaking society, there are still the other elements there. I was just wondering if you could tell us a little bit more about how you see the situation being resolved as regards Quebec?

1700

Mr Connon: Maybe if I put it this way, that I do not hear the concern over what BC thinks, what Alberta thinks, what New Brunswick thinks to balance the amount of concern over "is Quebec going to accept this?" There seems to be a lack of communication or a lack of ability to get that across. We do not want to see Canada break up. That is the last thing in the world any of us in the USCO that I know of want to see. It is most important that we try to pull it together. I do not know just how we are going to succeed, because every day we get a new division.

Ms Carter: Yes, I think we all have that concern. You suggest that the Senate should be abolished. Do you see any other way in which the provinces could have some kind of more direct input than just as part of the Commons?

Mr Connon: It would be if we are going to have a Senate. The Senate is, I would guess, originally intended to be a second opinion body. If it is free to make that second opinion then it is effective, but if it is manipulated politically then it is not. An elected Senate might correct that if it can be done properly. I can see the concept of regions, like the Atlantic region and the Prairies, being brought in to try and make it fair. But I do not know whether we get thinking of the American Senate, which is a very effective body. Our Senate is only effective as long as we are going to let it be effective. If it goes too far, we seem to like to find ways and means of cutting off its communication.

Ms Carter: A lot of the suggested changes are to give the provinces more representation through the Senate, which they do not particularly have now, but that is the idea that reformists have. At present, I think the input is largely through the premiers of the provinces having meetings to get their ideas through to the government. I just wonder if you have any ideas on whether maybe that should be the way it is done or whether there should be some special body set up for that.

Mr Connon: Yes, that no doubt would be a way to start. The thing is that provinces like Ontario and Quebec—assuming Quebec stays in Canada, in Confederation—look so big to, say, a Newfoundlander, a Nova Scotian, that they do not figure it is a fair balance. If they regionalized the Maritimes in that way for the voting anyway, maybe it would sort of balance it out, but we cannot help having the feeling. I have talked to quite a few of the seniors. A lot of them have the opinion that if we abolished it, maybe that would be one way of getting rid of the problem, but it may not be the right way.

The Vice-Chair: Thank you very much. We are going to go to Mrs O'Neill, and I would ask you to be as brief as possible as we have other presenters waiting.

Mrs Y. O'Neill: I just have one question, Mr Chairman. Thank you, Mr Connon; you are not alone, of course, in your last statement about abolishing the Senate. We have heard that from various people. I do not think anyone else has actually used the words "American takeover" in their brief and I was very interested to see how you came to that actual term, because it is a very strong term, on page 5 at the beginning of the paragraph: "The fragmentation of Canada would render Canada vulnerable to possible American takeover."

Mr Connon: This concept is starting to emerge. I have not heard it from the American side, but from our own Canadians. A lot are talking. In BC there is some talk of it. I have heard different ones talk about the possibility that this would be done eventually, that this is the only way to go if Quebec were to become independent. It is merely a speculation. It is something I think we would try to guard against, because if we have any pride in Canada at all, we would want to try to hold it together. I am not advocating an American takeover, not by any means.

Mrs Y. O'Neill: But you do see it as a real possibility.

Mr Connon: It is a possibility.

The Vice-Chair: Thank you very much from all members who asked questions, and I feel the same. Often when people come before a committee and say, "I bring a perspective as a layman and I am not an expert," normally it gives us a pretty good insight into a fairly interesting presentation. It was quite thoughtful and for that I thank you very much.

COMMON AGENDA ALLIANCE FOR THE ARTS

The Vice-Chair: Presenting to us next is quite an interesting group. It is called the Common Agenda Alliance for the Arts, which represents the membership of many various groups, some of them very well known to this committee and the people of this province: ACTRA, the Canadian Music Centre, Dance in Canada, Dance Transition Centre, to name a few of them. We have a group here that is going to present to us. I am going to name two of them, and if I miss anybody, please correct me. We have Catherine Allman, who is the director of communications and research of the Alliance of Canadian Cinema, Television and Radio Artists, as well as Garry Conway, who is the executive director of Canadian Artists' Representation Ontario.

As before, we welcome you to our committee. You have 30 minutes. We would ask for a little bit of time at the end so committee members may have a chance to ask questions on your presentation.

Mr Conway: It is our pleasure to address you today on behalf of the Common Agenda Alliance for the Arts. As was mentioned, we are a coalition of about 30 organizations representing a variety of Canadian artistic endeavours and cultural enterprises.

Many of our member groups are national in scope, others are provincial and a few are local. Because of Ontario's size, population and central position on the national cultural scene, most alliance members are based in this province.

As well as our own two organizations, members of the alliance include such groups as Associated Designers of Canada, Association of Canadian Publishers, Dance in Canada, Ontario Arts Council, Ontario College of Art, Ontario Crafts Council, Toronto Arts Council and Toronto Theatre Alliance.

We have different interests, functions, goals and agendas, and we certainly do not all think alike. However, we do all hold a strong belief that, collectively, we make enormous and essential contributions to the vitality and uniqueness of this country. As artists, producers, educators, administrators and distributors of culture, we help make Canada Canada.

Ms Allman: The Common Agenda Alliance for the Arts came together earlier this year in response to what many of us perceived as threats to the future of Canada's artistic and cultural life.

In February, the federal government announced plans to cut funding for special interest groups, which we understood would include arts and cultural groups. Then in June,

we noted ominous indications that Ottawa intended to devolve its arts and cultural responsibilities to the provinces.

Our concerns now focus on the respective responsibilities of all levels of government in support of artistic and cultural activities. In the light of the constitutional proposals currently under consideration, it is the role of the federal government that is most in question. We came together because we believe all governments, and most certainly the federal government, must continue to give strong support to the arts and culture of this country. We simply cannot imagine Canada surviving an abdication by the federal government of these responsibilities.

This does not mean we endorse the status quo. On the contrary, we believe the federal government is not now playing a strong enough part. It has been gradually abandoning its pre-eminent role and its indispensable coordinating function in the cultural field. Although the federal government says it wants to get closer to the Canadian people, it seems in fact to be moving further away.

The federal government is currently talking a great deal about national unity and its determination to hold the country together, but national unity cannot exist without national culture. Government actions such as the repeated severe and crippling budget cuts to the CBC and the funding freeze at Telefilm Canada are, we believe, seriously counterproductive to the goal of unity.

We are not naïve. We do not have our heads in the clouds. We know all too well that these are difficult economic times and we understand the need for all governments to be fiscally responsible, but arts and culture are not frills. Such activities as drama, dance, music, the visual arts and other pursuits included in most people's definition of the arts and cultural enterprise are an indispensable part of the country's fabric. There is no question that news and information programming on television and radio, films, books and other publications dealing with political and social issues are also part of our national arts and culture. These media inform us about ourselves and reflect back to us our own identity as a nation. No, these are not frills. We know and you know that these pursuits are essential to our life. We know and you know that they need active and ongoing government support if they are to survive and thrive.

1710

Furthermore, the role of government in support of culture is not just related to financial assistance. It also involves policy-making, regulation, co-ordination of national and international tours and much more.

Our shared conviction about the vital importance of the arts and culture to Canada has drawn us all into the Common Agenda Alliance for the Arts, and it is this conviction that has brought us here today. As Ontario legislators, you have a key role to play on the national scene. We are here to ask for your support in our efforts to preserve and nurture Canada's cultural integrity.

Mr Conway: We have a number of concerns about the government's intentions and its proposals as set out in *Shaping Canada's Future Together*. Some proposals, although they make no direct reference to arts and culture, could

have a very negative impact on these aspects of our national life. Some proposals hint at changes that would be detrimental to the arts without spelling out what might actually happen. Even more important, the proposals speak mostly to structure, not to the soul of Canada.

Time does not permit us to discuss all of our concerns, so we will be selective.

The proposals refer to what the government sees as its "challenge...to ensure...the maintenance of important Canada-wide institutions that help us promote our identity," but "maintenance" and "important institutions" are not further defined. What do these terms mean in this context?

By just about anyone's definition, the CBC is an important national institution that helps us promote our identity, yet rather than being maintained, it was severely wounded last year with the closing of a number of regional operations. Do you know, for example, that northwestern Ontario receives its CBC feed from Winnipeg, so that thousands of citizens of this province get their provincial news and information from Manitoba rather than Ontario? This state of affairs is one clear demonstration that maintenance of Canada-wide institutions is not enough.

Another concern is the government's declared plan to introduce a constitutional amendment that would make labour market training an area of exclusive provincial jurisdiction. Would this mean that Ontario would be solely responsible for arts training institutions located in this province, even though they serve people from across the country?

Also, a number of federally funded employment schemes now make it possible for arts and cultural organizations to hire apprentices and students, a state of affairs that serves the organizations, the individuals seeking training and the general public. How could such initiatives be funded if there were no federal involvement? We believe Ontario should vigorously oppose any attempt on the part of the federal government to abdicate this area of its responsibilities.

The last area of concern we want to bring to your attention today is the proposal that the government of Canada "negotiate with the provinces, upon their request, agreements appropriate to the particular circumstances of each province to define clearly the role of each level of government." The text goes on to say, "Where appropriate, such agreements would be constitutionalized."

Such a series of bilateral agreements between Ottawa and the individual provinces would almost certainly result in an uneven patchwork of structures and regulations that would bring all kinds of country-wide cultural activities into a chaotic state. At the very least, there would be a huge area of uncertainty in the arts world as well as in other arenas, especially because of the discrepancy in size and wealth of the various provinces.

It seems abundantly clear that not all responsibilities can be simply allotted to one or another level of government. Canada is a complex society, and our diversity must be recognized and respected. That diversity is not inimical to national unity; it is actually the other side of the coin. The apparent contradiction of unity and diversity is one of

the things that makes this country unique. What is more, even though we acknowledge a desire for streamlining administration in a number of areas, in the cultural arena duplication and overlap are positive attributes. They strengthen the foundation for creativity and permit the weaving together of a country-wide pattern of vibrant and thriving artistic activity.

In a related issue, we are strongly in favour of what sometimes is called concurrent funding, that is, the possibility of simultaneous funding for more than one level of government. Concurrent funding is criticized as leading to waste and duplication in some areas of activity, but in the cultural sector there is a distinct advantage to having more than one possible source of funding, so that no one level of government controls a particular project. Here again, overlap is a positive rather than a negative attribute.

We realize that the proposal for bilateral negotiations is rooted in an effort to accommodate the Quebec government. However, we do not believe this necessarily requires a symmetrical relationship between the federal government and the other provinces. We advocate the maintenance of the kind of asymmetrical federalism we have today, where there are special rules for Quebec but, at the same time, artists and organizations have equal access to federal programs and funding. This simply would not be possible if bilateral agreements led to a confused patchwork of cultural programs and policies across this country.

These are just some of the concerns of the arts and culture community regarding redefinition of Confederation. We would welcome an opportunity to discuss these and others with you in more detail. We hope these few examples will give you a sense of the difficulties we see in the constitutional proposals currently under consideration.

Ms Allman: But what do we ask of Ontario? Ontario, even more specifically Toronto, is without doubt a strategic centre of Canadian culture. Large numbers of artists, producers and administrators of cultural enterprises receive their training here. Cultural industries play a significant role in the economy of Ontario. These facts of life make it imperative that the Ontario Legislature play a major role in ensuring the continued health and growth of our country's cultural infrastructure.

This province and its larger municipalities have traditionally given strong support to the arts, but it takes all levels of government to ensure the viability of our cultural life. The role of the federal government is incontestably essential. In the constitutional proposals the federal government appears to be signalling its intention to pass over to provincial governments a role that can really only be effectively be carried out at the federal level. It would be asking the provincial governments to guarantee the integrity of federal programs.

Changes such as the decentralization of the CRTC without the preservation of national standards or federal withdrawal from sponsorship of national tours of performing groups and artistic exhibitions would unquestionably be disastrous to the vibrancy of Canadian culture. Such changes would place an impossible burden on this province, with its concentration of arts and cultural enterprises

that now serve not only the citizens of Ontario but also all of Canada.

Ontario would, de facto, have to carry the largest share of the responsibility the federal government would be abandoning. Even more, such changes would be disastrous to the less populated provinces, which have less in the way of cultural resources of their own and now benefit from the resources of other parts of the country.

We believe Ontario can and must take a leading role in ensuring the future of the arts in this country. Because of its size and significance in most areas of our national life, Ontario is in a unique position to ensure that the climate for arts and cultural enterprise in Canada remains welcoming and nurturing. Ontario can provide leadership to the other provinces in taking steps to prevent the federal government from making a catastrophic mistake that would affect all Canadians and indeed the future of the country.

1720

Although the preservation of a strong national cultural tradition is obviously of direct concern to our member organizations and their individual members, we are not speaking out of narrow self-interest. We trust you agree that the groups and the creative activities we represent are absolutely central to the national life of Canada.

We hope you will do everything you can to make sure there is a coherent and consistent cultural policy in Canada, one that involves all levels of government. We ask you to use your not inconsiderable influence of the Legislature of Ontario to rally the commitment of the other provinces and prevent the federal government from doing irreparable damage to the cultural fabric of this country.

We thank you for your attention and would be pleased to answer your questions.

The Vice-Chair: Thank you very much for the quite in-depth presentation to our committee.

Mrs Y. O'Neill: I am really quite pleased that several arts groups have come before us in the course of the last year. That has been very helpful.

I wonder how much of what you have to say you have shared with other provinces. That is what I would like to ask first of all. As you know, we have had the opportunity to visit all the other provinces. Now we have completed the whole circuit, including Quebec. Particularly what you are saying about training, for instance, is certainly not universally accepted. I am just wondering what kind of national organization you are working with, because it is true we can take a leadership role. I think we were received because we went to the other provinces; we did not ask them to come to us. That was a gesture many of them did not expect us to make.

But still they are cautious and still they see us as big and central, and that is somewhat to our disadvantage. I know how significant—and I will even say Toronto—certainly Ontario is in the arts community of this country, but many of the other provinces have very distinct cultural and arts contributions and organizations and associations or whatever you want to call these groups.

I would like to have you put into context the things you are saying about your national lobbying experiences—communications. Would you please try to do that?

Mr Conway: We have sent all the work we have done to date out to our provincial counterparts in every province in the arts groups. The Canadian Conference on the Arts has been working on these questions as well and we know they have sent their information out. As well, we have requested the provincial governments to let us know what their position is on culture. We have not had that many responses to date and the responses we have are very general, too general to answer your question.

However, one thing I would like to say, particularly when you ask the question about the labour training market: It is quite conceivable that indeed there are areas in labour training that perhaps should be under provincial jurisdiction, but in culture our feeling from the experience we have is that it would be far better placed under the federal government, under federal programs.

Mrs Y. O'Neill: I guess you were somewhat heartened by the response to the Arpin report by the artists in Quebec. No doubt you are in communication with them. I think that was quite surprising to several people in the province.

The Vice-Chair: Thank you very much, Mrs O'Neill. Mr Winner.

Mr Winner: Actually, Mrs O'Neill covered essentially the same ground I was going to ask them about.

The Vice-Chair: This is very scary. The two of you are thinking very much alike.

Mrs Y. O'Neill: The second time today.

Mr Curling: I want to put culture in the proper perspective, especially in a country like Canada that is so diverse and, if you want to say, so new in the sense of the immigrants who are coming here. Many feel and hold very strong views about their culture when they arrive in this country and feel that the dilution of their culture is very rapid because as they see certain governments fund certain groups and recognition of certain cultures—I hasten to put in place heritage languages. For instance, the resistance that we are given to the groups as they come forward to talk about that language is more than just the spoken word. It is a matter of living. It is a matter of expression.

You talk about the fact that it should be a federal jurisdiction in culture, and I can understand where you are coming from. It seems to me, if you want to call it that, the fight or the struggle or the preservation of things is right at the grass roots itself, because people seem to lose that grip if it goes federal. Those people up in Ottawa—at times you do not know where Ottawa is. It is a city of complete bureaucrats.

Mrs Y. O'Neill: Be careful. I represent one of the ridings of Ottawa.

Mr Curling: Those who see the light come into provincial politics. Therefore, we do have wonderful people there.

I know you did not make it as being rather trivial or to reduce the role of the province and of a government. I see

that role as being extremely important. I am talking about other levels of government playing a very strong role. I am expressing this from people who have come forward, and I will not be long, Mr Chairman. Even in the provincial government you will find we decide to divide up to two ministries of culture. I am sorry; one they call Citizenship, of course, and one they call Culture. There is some sort of confusion in where the funding goes.

Do you feel there is much more work to be done on the provincial level in order that the fight on the national level can be put forth? It has been a long, dragged out narration I have given, but could you comment?

Ms Allan: As Mrs O'Neill might have remarked, we represent associations that are at all three levels in a sense, national associations, provincial and regional associations as well as very local associations. I guess where we are coming from is that we have to say the federal government should take a pre-eminent role, because we believe what we do ties the country together and without what all our members do and the individual members—the artists themselves, the writers, the painters, but also the journalists—we would not be able to express ourselves as a nation in its diversity.

What we are seeking to do and what we are asking Ontario to take the lead in doing is in fact keeping the field open to all levels of government, and that includes local, regional, provincial and federal. We are not denigrating at all the provincial role. Many of our members very much rely on the provinces. Certainly with such a huge country there have to be regional linkups, because there are distinct regions within provinces and regions within regions. But what we would like to see is that culture does not become the exclusive jurisdiction of any one government, because it is a bit like papier mâché. We believe that when you take layers of things and lay them on each other, as kids do when they make those masks, when they harden they are rock hard. But if you are reducing a level, we do not believe you can have the strength that we have today.

Ms Carter: This is really not so much a question as a comment, because I pretty well agree with everything you said. All I want to do is to underline it. I think it is something this country needs other than just plain staying together. It is an intensified national culture, which I think would help solve some of our other problems, such as disoriented youth, unsureness about our identity, this kind of thing, because we tend to get swamped by the United States. I think what you people have to contribute is, as you said, a vital part of getting a unified identity and picture of this country. Also, of course, it is a real contribution to employment and the economy, which I think is something that is often forgotten or underestimated. I also think you are right, that to have a fairly complex funding picture does preserve your freedom to express yourselves and do the things that you want to do.

Ms Harrington: I wanted to let you know that a lot of our government members were called to have a chat with our new Minister of Culture and Communications fairly recently and we actually struggled with a lot of the things you have presented us with here. First of all, what really is

culture? How does it impact on our lives? What does it mean to us? We also dealt with the matter of the federal abdication of its national role, and we are very concerned about that.

Do you have any reaction to any of the issues put forward in the federal paper, such as the "distinct society" clause, native issues, Senate reform, the property issues clause or the social charter concern? That is a big question.

1730

Mr Conway: It is an enormous question. Some of these questions we are very much struggling with. There are not only a lot of questions but they are very significant questions.

On Senate reform itself, there are some provisions that relate to culture. They do attempt to address some of the issues we have. Whether this is the right place to put them or not, we are still not sure. We are in fact meeting in the very near future to discuss this further and would like to get back to you when we come to a greater understanding of what would be implied if some of these things were put under the Senate. What I am referring to are the double majority vote on culture and the ratification of the heads of cultural institutions—those two specifically.

The "distinct society" clause: I think one of the difficulties we have at this point is that we are dealing with the Constitution and in essence with technicalities and mechanisms, but what we still have not done is really face the problems we have to deal with.

For example, if the amendments went through as they stand, the first thing that would happen is that we would start opening the debate on the "distinct society" clause—which we have not addressed yet—through the courts. That is not the place to address the questions we have, questions that really relate to who we are as a culture and how we relate within our culture.

The same with the bilateral agreements: they provide a mechanism but do not answer the question. There is nothing in the Constitution now to stop a mechanism like that from happening. The proposal is to entrench this into the Constitution, but in fact we can already do it. It is already done in a variety of forms, in terms of provincial and federal relationships.

These are the problems we are trying to really get a handle on. When there are things we can already do, do they in fact need to go into the Constitution? And what degree of detail do we need to have in the Constitution? These questions are difficult to answer because the fundamental issue around culture still has not been answered. Whether we use it through new mechanisms in the Constitution or deal with it without changes to the Constitution, it is still the same problem.

Ms Harrington: If you have further comment on the other broader issues, we would certainly welcome it.

The Vice-Chair: As you probably are aware, the committee has travelled to other parts of the country and met with counterparts from other provinces. It is interesting to note that your counterparts in Quebec have exactly the same feelings on the point you raise in your presentation with regard to the devolution of powers from the federal government on questions of arts and culture.

I thank you very much for a very interesting presentation, actually quite a bit of work. I would be interested to find out how you put this together, because it is quite interesting.

Mr Conway: If I can make one request. As I said, there are some significant questions we still have to answer. I am wondering if it would actually be appropriate and possible that we have a much more informal discussion about these questions.

The Vice-Chair: That would be up to committee members individually. I would just point out that if you have any other information to present to us in writing, we would ask you to do that by December 16. As you are aware, we have to start working on our final report. But you are free to talk to members now, as we will be recessing at this point for presentations later on this evening. I would like to thank you for presenting to our committee.

Our committee will recess until 7 o'clock this evening. We will be hearing from other people speaking on the issue of our Constitution.

The committee recessed at 1735.

EVENING SITTING

The committee resumed at 1906.

ONTARIO SECONDARY SCHOOL
TEACHERS' FEDERATION

The Vice-Chair: The committee will come back to order. We are now at the second part of our day's hearings and in the process of hearing from the Ontario Secondary School Teachers' Federation, which is here to present to us. I would ask the members who are presenting to introduce themselves to people here so we know who is who.

Ms Barkley: Thank you, Vice-Chair. My name is Liz Barkley. I am the president of the Ontario Secondary School Teachers' Federation. I have two of our staff members with me: Larry French, who is our legislative researcher, and Roger LeBlanc, who is in charge of our francophone cluster and teachers and members. Neil Walker, who is part of our communication cluster, is and will be taking pictures. He also is able to answer questions you may have.

As I approach the whole situation vis-à-vis Ontario in Confederation, I would just like to say at the outset, before we really address the presentation we are going to make, that you might want to know that, like many people within our communities, teachers have just begun to realize the real importance of the question and to address it in a really serious manner. The 45,000 members of OSSTF, representing not just teachers but educational workers, that is, psychologists, psychometrists, custodians, etc, have taken a very strong position that we would like to be part of the solution of maintaining a united Canada and to help begin to motivate that—and I say "begin" because we have not really been part of the discussion—and to do what we can to make sure that comes about. We recognize that will take a lot of compromise and a lot of give and take.

We are members of the Ontario Teachers' Federation which represents about 124,000 teachers. It has taken the same absolutely unanimous position, and that is to help to be part of bringing about the unity of Canada. Two weeks ago I went to the Canadian Teachers' Federation which represents over 225,000 teachers across Canada and the territories who took a similar position. We will be meeting in two weeks to discuss a national action plan to try to see what we can do in order to bring this about. Recognizing this is not the same as the eve of Confederation, things will have to change. There will have to be compromises on all sides. What we end up with will not be what we start with. None of us will be hysterically happy with everything that occurs, but the end result is something we all believe is absolutely crucial and that is a Canada, and a Canada that we have grown to be very attached to, now probably more than we ever thought in our lifetimes.

I will give you just one other little anecdote. In our local areas, Scarborough, for example, one of the larger units we have has now taken a position, the board and the teachers alike, to have a twinning project with the schools in Quebec to try to exchange information, to try to exchange dialogue, to try to exchange points of view, to try

to help deal with the problem that we have right now within a changing Canada and to maintain Canada.

I will turn to the introduction of our brief. I know you do not want to be read to totally, but some of this I will try to read and some of it I think should be read. My three companions are extremely knowledgeable about the situation. I will try to have them bang me on the arm on both sides at 10 minutes so I do not take up all the time and so you can ask pertinent questions. I am not good at this, so they will do that.

On the introduction, I think it is important that I go to the second sentence. One of the things our membership wanted us to bring forward to you is that this debate is occurring in the context of course, and you know it, of the worst recession we have faced since the Second World War. You know what our unemployment rate is. I think it is now beyond 9.6%. In Ontario over a million people are unemployed and of course the real horror of all this is that we have over 300,000 children living below the poverty line. It distresses me when I see on TV, as you did, them saying: "It's not the same as the Third World. Are they really without food? There are no distended stomachs." Of course they are and of course it is sad and of course it is something we have to do something about.

We blame much of this on the federal government. It should be dealing with this economic crisis, and it is not. It is concerned, in my opinion, with the multinational companies. Federal initiatives and policies in fact have deepened the whole crisis. Due to the free trade agreement we have lost an estimated 300,000 to 400,000 jobs. The GST, high interest rates and the high Canadian dollar are all policies in grave need of remedy. The cuts in federal transfer payments which we are suffering from as a province and which will continue to escalate unless we do something about that have downloaded the national debt problems to the provinces and then again, as you know, to the municipalities.

Economic renewal must proceed every bit as quickly and as urgently as constitutional renewal. The two questions should go hand in hand, and if we can combine them, we should. I used to live and teach in Montreal. It has the highest unemployment rate in the whole of Canada, worse than Saint John's. You probably are all aware of that, but I think it is something we should deal with much more concretely, that is, a united Canada. Economically what does that mean? People in Quebec and people in Canada need to know that, need to have that pragmatic reality drawn to their attention. It has not been enough. We have not done it within the context of this particular brief. We have every intention of doing so in the future.

We are dealing with a government document. That is why the numbering is as you see it. We support clause 1 on citizenship and diversity, except for the amendment that would guarantee property rights. I will not elongate this except to say OTF does not support the property rights part of clause 1, nor does CTF which is representing the whole of the teachers except for Centrale de l'enseignement du

Québec, whom we have an ongoing discussion with. I would like this read into the record:

"How absolute is this right? A property owner, individual or corporate, protected constitutionally, may under the new clause have the right to damage or destroy his property, to ignore environmental concerns, to resist expropriation, to refuse orders for sharing after marital breakdown, to conduct activities not in the public interest, to rent or sell to clients whose activities are not in the public interest, to resist the payment of property or death taxes, etc." We are totally opposed to this clause.

It should be stated, because it has become such a point of this discussion, that we do not have difficulty with the "distinct society" clause in clause 2. I will not deal with the reasons why we do not. You can read them there, but we do not. We think it is a red herring. We think it diverts us from much more important questions within the whole context.

We support clauses 3 to 6 in the government document. On clause 7 we have difficulty, as I think many people within the urban environment of the Golden Horseshoe and probably elsewhere have. It seems very vague to us. It is a statement of recognition of the responsibility of governments to promote our multicultural communities and it is not strong enough or clear enough.

The Canada clause should be amended by the insertion of a reference to a social charter such as that proposed by the NDP in Ontario. One of the strongest unifying links that binds this country together is the national programs we share in health, in education and social assistance. We underscore this. We are committed to this. The recent caps on transfer payments in these areas threaten the quality of these programs and risk producing different standards, depending on the wealth of the respective provinces.

OSSTF proposes the following wording for the inclusion in the Canada clause: "a federation that guarantees a common standard of quality and of access to social programs in education, health and social assistance in all provinces and territories." Without that, what really makes Canada a nation would be destroyed.

We support clauses 8 and 9 through 11. We are not hung up on Senate reform. We are flexible on that to see what develops. It will not stop our support for a unified Canada, again a diversion in our opinion.

Clause 13 has been a major problem. We know that. We think the best solution is to keep the formula before Meech Lake, that is, seven provinces with over 50% of the population is preferable, as we say here. We know this creates difficulties. We think the seven provinces and over 50% is probably the easiest formula to be able to be accepted. We know of course in many cases this is going to be a compromise, but within the context we are in, compromise is going to have to be what we are about.

We also support clause 14 and, as you can see, OSSTF is not into writing clauses; that is not our purpose. We are trying to give the sort of global context of where we think we should be going.

In clause 15, despite the opting-out provisions, these clauses would give the federal government new powers to control the economy. In light of the damage federal poli-

cies have done to the Canadian economy in recent years, including the creation of a made-in-Canada recession within Ontario, OSSTF opposes strongly any strengthening of federal powers in this crucial area. The federal government should rather seek the co-operation of the provinces in establishing economic policy through a process of negotiations and consensus seeking. We do not value in one section of the proposals the creation of a more open and visible budget-making process. We have suffered under it. We do not agree with it.

Going over to clause 17, again, we oppose the proposed amendment that would restrict the mandate of the Bank of Canada to fight inflation. While inflation control is clearly the present practice under Mulroney-Crow, the bank has applied a scorched earth policy to the economy in the name of saving it. The present Bank of Canada Act contains the phrase "and generally to promote the economic and financial welfare of Canada." This goal directing the bank's activity should be retained, however.

We go to clause 18 and, of course, because we are educators we are also members of the community so we try to deal in the broader context, but we have to deal with training. We think it is very important. In 18 the federal government is ready to opt out of these two areas. A more enlightened federal government would have a constructive role to play in overseeing and financing these programs. The OSSTF feels strongly that the federal government, if only because of the mobility of the Canadian population, must retain the vital role of co-ordination of both training and immigration. Recognizing the problem that brings specifically to Quebec, we would be prepared to look at the problems that creates and modify it.

In any provincial training program, the preparation of teachers must have a priority. Within this context, ways and means of anticipating the needs of potential dropouts and of reintegrating and holding them should be a major part of teacher training and returning programs. In addition, the federal government should obtain a commitment from the provinces that they will accept the right of francophone populations to their own educational and training institutions. We feel strongly about that.

In greeting immigrants and helping them to adjust to Canadian life, we must ensure that they are exposed to the vision of a country where our many cultures find their unity on the bedrock of bilingualism, the foundation initially of Canada.

On page 8, under clause 20: In any negotiations concerning the transfer of responsibility for culture, a major question in free trade talks as well, as you know, the federal government must ensure that the rights of francophones outside Quebec are guaranteed as well as inside Quebec. To maintain positive and productive communications between anglophones and francophones throughout Canada, the federal government should continue to promote English and French language immersion and exchange programs. Of course that might be idealistic, but we feel quite strongly about that.

1920

Broadcasting, clause 21, is a problem that could be very real in the free trade talks as well as in this particular

discussion. Of course free trade is banging in to us as this question is banging into us. The amendments would offer greater powers to the provinces to regulate broadcasting. Unless the federal government retains the responsibility for national broadcasting through a vital and adequately financed public system, OSSTF cannot support the proposals. Only the federal government will have the will, as well as the ways and means, through resources such as Newsworld, to ensure that French-language broadcasting will be available to francophone populations outside Quebec.

At the same time the federal government can offer concrete encouragement to smaller regional newspapers, such as *L'Express* in Toronto and *Le Voyageur* in Sudbury.

I would maintain there is a whole problem in the whole arena of broadcasting that the federal government seems prepared to give away and not deal with.

The OSSTF basically supports the thrust of clauses 22 to 26. We oppose clause 27. We absolutely oppose it, as it may prevent the creation of any new national social programs in the future, such as a day care program. You may say that is not viable at this point in time because of the recession. It should become viable. It was in the Progressive Conservative platform in the last election. We will get out of this recession at some time and we do not want to block these kinds of national programs in the future.

Clause 28 was one we looked at and were not quite sure of. We still are not absolutely sure of it, but it is something certainly we would look at. The Council of the Federation seems, and we have "seems" there, like a vehicle for a broadly based countervail to the federal government. However, the federal government would have a veto power over any council decision, rendering its potential effectiveness extremely problematic.

Unless the federal veto is removed, OSSTF opposes the clause. You have to read that six times to figure out what we are saying. I understand that point, but it is because we are somewhat confused. It is not absolutely clear to us how this would function, but in fact we would be open at least to the possibility, depending on how it proceeded.

I had hoped to read our recommendations into the record, but I do not want to take the time. I would rather have the questions.

In conclusion, we must echo the sentiments expressed by Harvey Weiner, deputy general secretary of the Canadian Teachers' Federation, which represents teachers across Canada. There is no escaping our obligation as a nation to reshape, even to recreate, a document that does not adequately recognize the rightful place of Quebec and of the first nations in our national life or our understandings of the needs of our multicultural communities.

In an address to the CTF, Mr. Weiner said:

"Should we not respond as well to the needs of western Canada"—we must—"and increase their influence and voice through more equitable federal political institutions?" We have to look at that as well.

"The Canadian Confederation was built on compromise. If we continue to spend time attacking and destroying the spokes of the wheel, different spokes for different folks, the wheel will inevitably collapse.

"Do we have the courage, wisdom and the common sense to do what needs to be done to survive as a nation? The irony is that failure to accommodate one another will ultimately destroy what some individuals and interest groups seek to protect. The euphoria of those whose objective is to divide us, or of those who think such division would be of benefit or of little consequence, will be short lived. Failure will produce no winners, only losers.

"The best constitutional package would be one that reflects our traditional generosity of spirit as a nation.... Paradoxically, each Canadian should be prepared to lose a little if collectively we are to win a victory that will ensure for ourselves and our children a brighter future."

We say amen to this. We say that the teachers of Canada in the main are very committed to a united Canada and we hope to be part of that solution. Thank you. My colleagues here may like to make a comment.

M. LeBlanc : Je voudrais tout simplement indiquer que dans le cas de la Fédération des enseignantes/enseignants des écoles secondaires de l'Ontario, qui vient de l'OSSTF, une chose qui nous tracasse beaucoup, c'est qu'on veut absolument que le Québec soit à l'intérieur d'un Canada uni, mais en même temps on ne veut pas voir disparaître les droits des francophones à l'extérieur du Québec. Pour nous c'est très important. On pense que les francophones en Ontario et à l'extérieur du Québec ont travaillé de très près avec les anglophones pour bâtir cette section-là du Canada et on veut voir ceci rester à l'intérieur d'un Canada uni.

The Vice-Chair: You have certainly sparked a lot of interest on the committee. I have a speakers' list that more than likely I will not be able to accommodate.

It is quite an extensive presentation you gave to us. It is the first time I have seen somebody attack it quite in this way, specifically laying it all out, basically where you stand on all the various positions and what your recommendations are. For that, I congratulate you.

To begin our speakers' list, we will start with Mr Malkowski, followed by Mrs O'Neill.

Mr Malkowski: I was quite impressed with your presentation tonight. There are two things I would like to ask you to respond to. First of all, you did not say much about the "notwithstanding" clause in section 33. What is your position on that? Would you like to see that retained, or an increase of the 60% in the funding?

I understand as well that the special education deals with disabled children, in schools for example, and that is under your comments. I would like to hear what your feedback is on the rights of disabled people in Canada and where that should be, and also your views on multiculturalism and native people. I would like you to say a little more about that if you could.

The Vice-Chair: Just before we start this, I will allow each member one question because we have a lot of speakers and we will try to get them.

Mr French: On the "notwithstanding" clause, we realize that this was a very costly addition to the previous Constitution and that it was really the price of getting the west to go along with the constitutional reform. I think

there would be a reluctant acceptance of the "notwithstanding" clause on our part.

M. LeBlanc : Nous avons toujours cru que toutes les cultures devraient exister à l'intérieur d'un seul Canada, pour essayer de les développer, mais que le multiculturalisme devrait être à l'intérieur d'un Canada bilingue. Donner l'occasion, lorsque les immigrants arrivent — les exposer au concept d'un Canada bilingue, c'est ça qui est en effet notre position.

The Vice-Chair: Did you want to add something to that, Ms. Barkley?

Ms Barkley: I think the third part of that was on the question of the disabled. We are hoping that the Charter of Rights and Freedoms will be protective. If not, we will deal with that within the context of the Constitution. We believe that the Charter of Rights and Freedoms should be the protector there.

The Vice-Chair: Very good. Mrs O'Neill.

Mrs Y. O'Neill: I want to go to recommendation 5, concerning adding to the Canada clause the subclause "a federation that guarantees a common standard of quality"—I will leave out the words "and of access" because I think I understand that better—"to social programs in education"—and I will stop there. Would you be able to tell me a little bit more about how you feel that could be accomplished?

Ms Barkley: I think one of the problems we have is we thought that was always the case. In other words, we believe that the social contract laid out within the context of Confederation was sorted out recently by the Supreme Court, guaranteeing that there were going to be transfer payments to the provinces. Within the context of the inequality across all the provinces, those transfer payments would make very sure that the haves and the have-nots had equal access to moneys.

As far as we are concerned, the breaking of the social contract by the federal government has created a disparity. For example, one of the ways it has done that is in post-secondary education, probably much more acutely in the eastern provinces than here, in that there are not now enough moneys that can guarantee that people who are poor, students who are poor, will be able to afford access to post-secondary education. It will happen in Ontario too.

But again, even within the context of the secondary schools which we represent—I hate to say it; I will not mention the place; there are no press people here, are there?—there are some places now that, for example, have bingo games five days a week which the teachers put on in order to buy such things as places in home economy rooms and Bunsen burners and cheerleader uniforms etc, and there are now some places where people have to pay to go on field trips.

Mrs Y. O'Neill: I think I understand the access part. I ask you about the quality, and maybe there is not as much of a distinction as I think there is.

1930

Ms Barkley: The quality of education?

Mrs Y. O'Neill: Yes.

Ms Barkley: We are talking about accountability now. Is that what you are getting at?

Mrs Y. O'Neill: I do not know what you mean. That is why I am trying to come to grips with recommendation 5 and that is why I skipped over access, because I think I understand the access. But it guarantees a common standard of quality in education, and maybe that is more closely tied to transfer payments in your presentation. If that is the case then my question has been answered.

Ms Barkley: No, Mrs O'Neill, I do not think I did—I will let Larry try this one.

Mr French: We were trying to get at the financial ability of provinces to offer reasonable programs of a comparable quality. The equalization payments help equalize the burden, and the transfer payments, in particular the established financing programs, help again, so that each province, no matter what its wealth, has reasonably equal access to programs for a reasonably equal tax effort. The quality and nature of the programs depend on the province. But they have the financial ability to finance it, and that is what we were getting it.

Mrs Y. O'Neill: Okay, thank you very much.

Mr Eves: I want to touch on your recommendations 5 and 6 as well. This term "social charter" seems to be thrown around quite a bit. If you ask 100 different people, we have found it seems to mean 100 different things. Is it your viewpoint that your recommendation would create judiciable rights? In other words, rights that could be taken to the court and enforced, such as are in the Charter of Rights and Freedoms?

The Vice-Chair: I am going to allow one question. If we have got time, we can come back.

Mr Eves: Okay, my follow-up question on that is, if that is what you envision as a social charter, would your viewpoint likely be changed if indeed the Council of the Federation was a true equal partner in federation without a federal veto? In other words, everybody has one vote or however many there are, including the federal government.

Mr French: Actually, we were thinking of something that would be in the nature of judiciable rights. The province of British Columbia tried to sue the federal government over the unilateral repudiation of the transfer payment obligation, and failed. We felt there should be recourse of that nature from unilateral federal action. However, I quite agree with you that if the new institution, the Council of the Federation, was meaningful, it would serve the same purpose.

Ms Barkley: There is some confusion, I think, among all of us speaking here. I think people generally are getting the terms social contract and social charter mixed up, what is one, what is the other. I just mention that because I think I just did.

Mrs Mathysen: Recommendation 14 was of real interest to me, and I will tell you why. I was at a meeting last week, and we listened to a native leader who was talking about the need to develop sensitivity around teacher

training and make it fit the needs of a new Canada in terms of understanding native children.

It made me think back to my days at Althouse and my teacher training. We did something that we called professional practice, and for the life of me I do not know what that hour every week was all about. Have you given some specific thought to the kind of teacher training, what it would encompass and how it would be delivered? I was hoping that this concern around these native students was being addressed in that.

Ms Barkley: You have just hit upon one of my absolute biggest angsts within education. I was on the Teacher Education Council, Ontario for a whole year, and I do not think I have ever gone through such a difficult committee to be able to come to any conclusions. This is the teacher training for Ontario. It is one of the most conservative areas of the whole of the educational system I have ever seen. You have the universities, you have the faculties, you have some parts of the affiliates, the teachers' organization—and you have the trustees' council, and to change that group is nigh to impossible. I have been teaching for a long period of time now and I do not think it has changed very radically since I was there.

I went to the faculty of education of University of Toronto last year as a federation representative. We had about 1,200 students. The average age of the students was 30 years of age, which is not as it was when we were there. Also, when I looked out I would say that maybe if there were 10 people who were not white Caucasians, I missed them. When we dealt with aboriginals, I tell you, there was not one.

When we deal with the content of the natives, of the first nations, of the aboriginals, even now within our history books it is still "Wa-wa-wa-wa-wa" and "Ugh." I am serious. It still has not changed as radically as it should. One of the areas of education, if you want to talk about something that should be shaken up, is that it is not the people there, it is not the teachers there, but the teacher training contexts and the universities, in my opinion, that are most at fault. They fund the situations, they somewhat control the programs and they want to retain high academia. You know you have to be able to have an 85% average when you finish and you have to have a whole lot of experience within the community. A poor person or an aboriginal person is going to have to have done paperwork. He or she cannot have gone to summer camp and got all that experience with young people, etc.

You can take that to every level of the educational system, within the history courses, within almost any context of our system. It may be improving slowly, but it is very slowly. That history is not being rewritten. Fundamentally, we do not have teacher training for aboriginals. They are certainly not being incorporated nearly enough within the faculties. There is some attempt to have more places for the disabled, visible minorities and aboriginals, but it is exceptionally slow. If we wait, possibly by the year 3000 we might move.

Mr LeBlanc: Regarding aboriginal rights, I have an experience of some years ago. I was director of education

in Cornwall for some time. We worked a great deal with the Mohawks on the island to try to help in the delivery of education. Working with them was ideal and we were doing very well, but the most difficult time I have ever had was working with the Department of Indian Affairs and Northern Development. I have never seen anything go so slow in all my life and I think something is going to have to be done. That is the major problem.

The Vice-Chair: Thank you. I am going to allow one more question and that is it. We are over our time. I will go to Mr Winninger. Unfortunately I have to make these arbitrary decisions.

Mr Winninger: I would like to commend you on your polished presentation. Of course, I would expect nothing less from such an estimable association as the OSSTF. Mr Chair, I do not want you to be fooled. This may sound like two questions.

The Vice-Chair: I knew there was a catch. We have been lenient.

Mr Winninger: Recommendation 3 deals with native self-government. What you have done essentially is accept the federal proposal. I just wondered if you had considered the opposite views of many native and non-native delegations which have suggested that an immediate inherent right to self-government should be entrenched: "Don't put it off for 10 years. Don't let the courts define it." In recommendation 17 you reject the proposal regarding the Bank of Canada, yet I wonder why the idea of more regional representation on the Bank of Canada, more regional input to the Bank of Canada would not be attractive to your association.

Ms Barkley: We certainly agree with you on recommendation 3. You are right. I will just say categorically that no, we do not think they should wait 10 years. None of these things—well, some of them are committed to stone, but certainly on the 10 years I agree with you totally. We would certainly listen to the input of the aboriginals and, no doubt, change our position if we heard or perceived what they wanted. That is not at all something that is written in stone.

On the Bank of Canada, I will leave Larry to deal with that one, because I am not as familiar with that.

Mr French: We felt that the changes in the mandate of the Bank of Canada were the problem. The present mandate allows the Bank of Canada to stimulate economic growth and full employment and work for reasonable price stability. We feel this is a good and productive mandate. The price of the mandate was too high and we opposed it. No matter what representation it would have, it would not be helpful if it was restricted to inflation fighting.

The Vice-Chair: Thank you very much for holding almost to your word, Mr Winninger.

Thank you for making your presentation. Again, I underscore that your brief will be most helpful in the sense that it brings forth some fairly interesting points, and was very well put together. For that, thank you.

1940

PROVINCIAL COUNCIL OF WOMEN OF ONTARIO

The Vice-Chair: Pearl Dobson represents the Provincial Council of Women of Ontario.

Ms Dobson: Good evening. We certainly appreciate the opportunity of being here and we wish you a lot of luck with this task. It seems to be getting more difficult almost as the days pass. I do not know how you will bring things together, because we have certainly had our difficulties.

The Provincial Council of Women is a multifaceted organization. We are not going to deal with one subject here. We are not a single-issue group. We are made up of organizations. It is an organization of organizations. From that and the introduction, you will see that we may be coming from different contexts and not zeroing in on one particular subject, as other organizations are able to do. We are supposed to set the climate for the organizations to operate in.

My presentation is set up in three different sections. One is to tell you where we are coming from and where we hope to go, in more of a generalization. The second part will deal with comments and some specifics about national unity and the Constitution, more or less general statements, but zeroing in very much on giving you a direction of where the council of women intends to head in the future in dealing with national and provincial government issues. The third part will be more specifically geared to answering questions in Shaping Canada's Future Together, the federal proposals. I think we will have already told you how we hope to relate the federal and provincial. We are also structured at all levels and sometimes it is difficult. You have the problem too of dealing with other levels of government and you know how we must find it, to fit something that everybody is happy with.

I am first going to start out with a statement of faith, which was more or less what we started out with in the beginning and which we have never found our membership has wanted to change. It is what we try to base the philosophy of our action on.

"Sincerely believing that the best good of our homes and nations will be advanced by our own greater unity of thought, sympathy and purpose, and that an organized movement of women will best conserve the highest good of the family and the state, do hereby band ourselves together to further the application of the Golden Rule to society, custom and law."

The National Council of Women of Canada is one of Canada's oldest advocacy organizations, celebrating its centennial at the national level in 1993. It represents a broad, diversified and democratic voice in Canadian society. The International Council of Women started in 1888, has its head office in Paris and has two official languages, English and French.

The Provincial Council of Women of Ontario's contribution to the Canada that we know and enjoy living in is well documented. Former Ontario Premier John Robarts said, "The council of women is part of the history of our province." He cited the help given to immigrants in the

early days, the vital part played in securing the vote for women in 1917, the concern for maternal and infant welfare, especially during the Depression, the contribution to the war efforts of our country, and the continuing awareness of changing conditions in our fast-moving industrialized society. That was in our history of the Provincial Council of Women, *Flame of Compassion*, printed and published in 1967.

Our current national president is Joan De New of Woodstock, Ontario. On learning of the mandate of the Spicer commission, she said, "The council of women has been filling a role like that for the past 98 years and is a natural agent for following up on the committee's work." It left us with a little responsibility. Our concern for a unified, dynamic Canada, the environment, national parks, the CBC, the railways, the national library, museum and film board has been and remains constant and persistent. "Buy Canadian" was one of our popular slogans to deter our members from cross-border shopping. We used to have it advertised on the back of every yearbook.

Today is not the first time we have expressed concern about Canada, its future and its Constitution. We urged the immediate patriation of the Constitution with the amending formula in February 1981. We supported the Charter of Rights and Freedoms, particularly as it applies to women. We responded to the task force on Canadian unity; the Meech Lake accord; the joint parliamentary committee on Senate reform; *A New Direction for Canada—Economic Renewal*; *Canada's Future—Challenges and Choices*; the special joint parliamentary committee on the Canadian Constitution, both in 1971-72 and 1979-80; *The Way Ahead—A Framework for Discussion* in 1977-78, and previously to this select committee.

The National Council of Women has an ad hoc committee on national unity at the present time studying prospects for a new or altered Constitution with an open approach, recognizing the need for compromise but, more important, emphasizing the benefits of a Canadian nation and our pride in what has been built up over 124 years.

Perhaps the geographic location of Ontario in Canada gives us a special opportunity to play a pivotal role in the shaping of Canada's future. One certainty has evolved: We want to bring an end to the growing threats of dismemberment of this country. Despite the fact that we have been talking about the possibility of Quebec leaving for about 25 years, once again, as with Meech Lake, we find a tight time frame placed on the parliamentary committee and have to ask why. We also know that while hearings are going on across Canada, some of the proposals we are responding to are being changed.

We suggest the hope that any referenda in Quebec, to be decisively more useful, will be based on Quebec remaining in Canada rather than a further dilution of decision by being based on sovereignty-association.

We also ask why there is not greater access to information in Ontario about what is going on in Quebec about the progress of this debate and reactions to the proposals. Information is not a bad thing. Perhaps there were many Canadians who were not previously sufficiently aware of the many ways in which Quebec and its status differ from

the other provinces. If they had known, it might be easier for them to accept the "distinct" category now, but to deliberate on these "might have beens" would only waste more time, because sometimes I think that in the west they probably did not know that Quebecers had a separate pension plan, a civil code and all of these things that were quite different and probably felt more like Quebecers than Canadians over all the years.

I think everyone is agreed that the economy needs and deserves some attention. We need to become more competitive and we need to develop secondary industry. There are trade and employment barriers that can be improved. Certainly we need a unified country pulling together to take care of our debt load and preserve our international reputation.

1950

We support a stable system of post-secondary education across Canada. We should encourage more women to study math and science and have more job training geared to market needs.

More harmony between labour, industry and government will be required to improve our export quotas and meet the competition from the increasing globalization of trade. The entrepreneurial spirit will ignite with incentives, a market and minimal obstruction.

Inclusion of a social charter or Canada clause being entrenched in the Constitution is being studied. It is more likely that the council of women would approve of its insertion in a preamble and not being entrenched in the Constitution.

Canadians care about their environment and PCWO accepts the challenge to continue to seek member support in working towards sustainable development.

For some general statements on policy, because we only speak from a point of view that has been developed through resolution—we were in Toronto, that is why I am a lone soul tonight, because we have just completed our semiannual meeting in Toronto with the Premier and some of the cabinet ministers.

PCWO strongly supports the need for action to ensure that Canada will continue to exist as a strong economic and political unity. Our members, although strongly attached to the province of Ontario, are first of all Canadians and would urge the government of Ontario, as our representatives, to place high priority on the needs of Canada as a whole.

PCWO is disturbed that the process of constitutional change is taking up so much of the country's resources in terms of time and money. The council would recommend that the government of Ontario co-operate fully with the federal government to adjust the Constitution to solve some of the urgent problems facing Canada, such as the distinct society for Quebec, self-government for Canada's aboriginals, and better representation for the smaller provinces and regions through a reform of the Senate. Other suggestions for change in the committee proposals should be subjected to negotiations for the time being with possible constitutional changes later on.

In a rapidly changing society, it seems better to have a Constitution subject to broad interpretation rather than at-

tempt to restrict future generations with strictly defined procedures. We are concerned about the use of any mechanism involving referendum or constitutional assemblies for decisions which require extensive legal, economic or scientific background knowledge.

The conference Towards 2000, a Changing Canada, recently held in Ottawa and planned by the University of Ottawa and some other academics, showed the inability of a cross-section of the Canadian population, even though it was selected as people concerned with and wanting to be involved in constitutional change, to either respond to the committee report or to provide any instructions or guidance for the government other than a list of idealisms. If the government of Ontario feels it must support plans for a constitutional assembly, it should make it clear that this is a mechanism for information extension and not for policy decision.

The provincial council supports the addition of a Canada preamble to the Constitution and the involvement of people in the selection of items to be included, but it does not consider this to be a priority item at this time in so far as it might involve diverting more resources, time and attention from the much-needed economic co-ordination required by governments, and of course the things we have already said were urgent.

Negotiations with Quebec: Although the provincial council does not like ultimata, we would agree that the need to negotiate with Quebec has become critical and there must be agreement on some deadlines. We reiterate the values which most Canadians share and expect these values would be shared by most people in Quebec as well as by most people in Ontario. These are general values. PCWO seems willing to recognize Quebec as a distinct society, one that as a smaller linguistic society in a basically English North America needs care, nurturing and help to preserve its culture.

Any agreements between Quebec and the federal government or other provincial governments should ensure the free movement of all Canadian citizens within all parts of Canada and ensure that they are given all provincial rights and privileges of the province wherein they may wish to live.

The provincial council reiterates its desire to keep Quebec as part of Canada. Members are studying the possibility of giving Quebec autonomy over those issues the Quebec government considers to be most important to Quebecers—that is, as it now has its own process for pensions, CAP, etc—but possibly with an offsetting mechanism which would deny the MPs from Quebec the right to speak or vote on legislation which pertains only to the rest of Canada.

Agreements for special powers in consideration of distinctiveness must not, however, interfere with the powers of the federal government to maintain security and make international agreements, control things overlapping provincial boundaries and things which affect growth and prosperity. There should be a shift in the power base towards provincial, municipal or native centres. They should be able to administer their own social development programs. They are more tuned in to local needs and the

programs can be more specifically directed. In other words, the federal government would maintain security and things having to do with anything international.

Quebec should also be encouraged to participate in new institutions which may be formed in order to develop basic national standards, such as education, health, welfare, etc., and to be encouraged to co-ordinate economic policies to the advantage of Canada as a whole. Ontario should negotiate with Quebec and other provinces to provide for a free flow of goods, services and capital. A greater harmonization of policies dealing with the public and private sector is needed.

The PCWO position re the French language is quite clear. Some members saw language as a crucial question and we developed a lot of workshops on this particular issue. Many supported official bilingualism federally while calling for tolerance and common sense in more local contexts, recognizing that parts of Canada, particularly the west, find it impractical. Some thought that learning a second language should be encouraged but not imposed. Having a second language enriches one's life and was described as a delight by one member. It was noted that immersion classes were effective in teaching the second language. We would add that more exchange visits should be promoted between Quebec and other parts of the country. In exchange for acceptance of two official languages, Quebec should be asked to ensure more rights for its own non-French-speaking population.

Negotiation with native people: We would support an entrenchment in the Constitution of a clause which recognizes the inherent right of aboriginal peoples to self-government. However, the method proposed in the committee report would be far from satisfactory. The process of providing native self-government should be accomplished in a much shorter time frame than the 10-plus years suggested in the committee report.

The provincial council is in unanimous agreement that we need to deal more fairly with aboriginal peoples, that they need more control over their own affairs, that land claims should be settled quickly and that there should be an end to the destruction of environments on which they are economically dependent. The granting of self-government would, we believe, increase their self-respect and self-reliance. The role of the Indian Affairs and Northern Development department should be reviewed, since the department is now thought to impose and perpetuate dependency in native people.

Senate reform: We recognize the concerns of smaller provinces, northern territories and native people, that they seem to be governed by the more developed central areas, whose MPs greatly outnumber theirs. PCWO would support changes in the composition of the Senate to give more weight to less populous areas.

Our members are concerned over the apparent dysfunction of the present Senate and would recommend review of its operations and procedures, including the appointment of senators. We would probably favour an elected Senate. We have no definite policy on that yet.

Our members are concerned with the cost of the present Senate operations and would recommend changes in

methods of operation, resulting in a possible reduction in the number of senators. We would recommend that references to the present Senate be excluded from current constitutional debate so that early negotiations for a new entity can begin immediately and not hold up the changes required for Quebec and the native people, the ongoing discussions on the Constitution—in other words, have a separate Senate deliberation on what changes are going to be needed for the Senate. We have also responded to the federal government on changes for the Senate so we have some background on possible changes.

This is more or less geared to shaping Canada's future, but certainly we have been asked to also take into account some of the federal proposals at this presentation.

2000

Shared citizenship and diversity: Reaffirming rights and freedoms of citizens was the first subject. I will not read the subject topics, just our response. We do not consider this a critical issue. There is strong support for a preamble to be added to the Constitution outlining the general aspirations of Canadians. This is an issue that can be shared by the population at large and should be given time. We probably oppose any entrenchment of property rights, as this could create imbalances and legal decisions favouring the haves, mainly men, against the have-nots, mainly women.

Recognizing Quebec as a distinct society: PCWO agrees that this is critical. We would like to study the list of what the Quebec government considers to be more important—to consider what would be feasible for the rest of Canada, and to have later input.

We have not really seen the list of what goes beyond Quebec wanting a distinct society. There must be offsetting agreements to guarantee more rights for non-French in Quebec.

On aboriginal involvement in constitutional deliberations: We agree with that, of course, and we feel it should not have been a proposal; it is a given.

Aboriginal self-government: The time frame is too long and we have already said that.

Aboriginal involvement in the constitutional process: too weak and too slow. The problem is critical. It is going to happen.

Representation of aboriginal peoples in the Senate: This should be part of Senate reform and not a separate issue.

The Canada clause in the Constitution is important but not critical. We think the proposed list given in *Shaping Canada's Future* has some merit.

Responsive institutions for a modern Canada: House of Commons reform is needed, but it is not a constitutional issue. We say we go along with a lot here that we do not really have a policy on. We also think they need time.

Principles of Senate reform: We want to study, and details of all Senate reform is a big issue.

Ratification of appointments to regulatory boards needs time for further study.

Appointments to Supreme Court: We have no policy.

Amending formula: The current Constitution is probably as good as any, but we did approve of the Victoria

formula when it was prominent. There have been so many things happening on this issue.

Preparing for a more prosperous future: Common markets: We feel they must be negotiated. We would probably favour more integration and that could also be negotiated. This issue should not be used to hold up critical issues. We would not favour giving autocratic powers to the federal government.

More federal power to manage the economic union in Canada: not timely and not part of current constitutional changes. It would probably be opposed by council, but we might get involved in urging more federal-provincial co-operation. This requires much negotiation.

Harmonization of economic policies: intention for guidelines is good.

Reforms to Bank of Canada: More study is needed and it is doubtful we would support drastic reforms to the Bank of Canada.

Training: Provinces could be given more control, but this should not be entrenched. There would be an overlap because of national and international companies.

Immigration: not constitutional, but negotiations are always in order.

Culture: could be better defined, not constitutional, though.

Regionalizing broadcasting: Consultations would be supported and we have a lot of background in our resolutions on broadcasting, CBC and CRTC, etc.

Residual power should not be changed at this time. It needs to be understood by the population, and also with federal declaratory power.

Recognizing areas of provincial jurisdiction: not critical; it requires negotiations. As a rule, provinces should be given control over these areas, but this should not be written in the Constitution because there will always be areas where there is overlap with other provinces and international affairs. It requires fine-tuning by negotiation. What is best for Canada as a whole must be the issue, not political expediency.

Legislative delegation: If it is not in the Constitution, there is no need for "notwithstanding" amendments.

Streamlining of programs and services: This is very important but should not be considered with constitutional changes.

Federal spending power in areas of provincial jurisdiction: not an issue any more. It should never have been permitted. Present agreements may have to be reconsidered, but at the moment this council could not say it wants to see the national health system changed.

A council of the federation might be the best way, but we feel overgoverned already and would not wish to see more institutions engraved in the Constitution.

We have a footnote here that is a generalization. Proposal of a social contract seems to have been left out. Certainly the Premier of Ontario has been supporting that and talking about it, and we did have an opportunity to speak to him about it. We do not have direct policy on it but we feel that at this time the courts are already loaded with cases. We would not want to see it entrenched in the Constitution at any rate, but probably, as we have already

intimated, these nice things—idealisms—that you can afford if you have the money could be put in a preamble.

Also, in times of economic crisis there will have to be some changes that should be the responsibility of an elected body, not a judicial body which is appointed. Canadians do have a strong social conscience. This should suffice without entrenching future national social commitments into the Constitution, especially in so far as it would be difficult to foresee the most important future needs. We also have to balance Canadian social issues with those of the environment and the Third World.

I think I will end it there. If you have some question I will try to answer them. As I say, we speak from policy and this is rather difficult, as I do not have a barrage of competent people with me, but I will try.

The Vice-Chair: Thank you very much, Ms Dobson, for a very interesting presentation. I will first go to Mrs O'Neill.

Mrs Y. O'Neill: Ms Dobson, thanks a lot. You commented in your brief about it being a tight time frame. You likely do not realize you are the last presenter in a series that has gone on with us for 10 months. We felt it was not as tight a time frame as maybe you were perceiving. Perhaps it was the federal committee you were referring to, because it does seem to be under a tighter time frame.

Ms Dobson: Yes. We were referring to the federal time frame, because I also referred to the changes taking place now. Evidently they are making changes. I understand there are three areas that have already been changed, from the questions that were in this, and we are still receiving more sections on this in Ottawa. I have received two just in the last week that look like this but are on other specific issues.

Mrs Y. O'Neill: I like your comment about what is going on in Quebec and how much we do not know about that. You likely do know that we, as a committee, went there last week. We had what we consider a very good meeting. I guess I would like to ask you why you think it is that we do not know what is going on in Quebec. I have my own theories. You talked about this, as you did include it in the brief. I think you are the only person and only group that have brought this to our attention, that they would like to know more about what is going on in Quebec.

Ms Dobson: We have talked about it. As a matter of fact, it is really related to the other comment that perhaps if all of Canada had known more about how Quebec people felt over the years and if there had been a better exchange of information. In Ontario I think a lot of us feel a little bit closer to how Quebecers feel. Certainly in Ottawa we do. But in the west, when I travel there, they feel more inclined to think Quebec is just another province like all the others, yet if you were born in Quebec as a French person you probably would feel differently; practically everything in your country is in English. I do not think the whole country got that information clearly enough. I do not say there is any direct suppression, but I think there is a tendency for us to look at this here by ourselves and something else over here by ourselves but not to mesh together.

In Ottawa if you get the Quebec newspapers you will read the glaring headlines of anything that goes wrong, just like in our press. I do not think we are getting the information about how the Quebec population feels about it. I do not think there is enough happening in that respect at all. We are not dialoguing enough, as we did not with the native people until now. Now there is a lot happening there. I think we have to have more exchanges in the future. We really have to get together and know other Canadians. We are beginning to know the native people for the first time. I grew up in Ontario and I always had a feeling about them, but I had never met them. Now they are coming out and we are meeting them. We are getting to know them. I think it will improve.

2010

Mr Eves: I want to go to the last page of your presentation and the last two points you make. You talk about the Council of the Federation and you say you do not wish to see more institutions engraved in the Constitution. It seems to me perhaps such a body is a way of ensuring that Canadians do receive benefits they are supposed to receive, and especially ensuring that provinces are not unilaterally cut back by the federal government. That could be one body or mechanism that could be very useful in resolving shared-cost programs between the federal government and the provinces to make sure Canadians as a whole do not lose such programs as medicare, which we are used to and, after all, is part of our Canadian heritage and culture. I wonder what your thought might be on that.

Ms Dobson: We feel it may be the best way if there is not a better answer. We really feel, looking at medicare, it was ultimately a case of transfer payments and not necessarily an accepted thing. It has been accepted and certainly appreciated by most of us, but when it was introduced there were a lot of hard feelings. In this province there certainly were, because it was a case of, "Bring in the program or you won't get the transfer payments; you won't get the money." That is more of a blackmail type of situation than we would like to see. We would like to see the provinces have the opportunity to have their own programs. If it means taking over more control in the taxing powers, so be it.

We do not like to see programs imposed because of the withholding of funds. In that particular way we do not think it was a healthy thing. We do think, too, that even with respect to the medical services there will have to be some serious decisions. Certainly the Premier told us. We are seeing some being done already, and I think there will be more. Ultimately we would have to say we like to see a strong federal power but we do not like to see it exercised by the control of who gets what in the pie of money.

Mr Eves: Do you not think such a body would perhaps be a way of achieving the end you see?

Ms Dobson: We say it might be the best way because we think there would be a strong war if we ever decided they are not going to have some of these universal programs. Canadians seem to have universal expectations of these kinds of programs. Our organization tends to feel we should have an economy that supports a good standard of

living and we do not feel we have to have a law or some framework imposed on us to see that we do these things. If we have jobs and we are earning an income, we should more or less decide this is a program that will stand more on its own and we are not going to go into a situation where there has to be a law.

We do not think either that there should be more and more programs forced on the people without it being the decision of the provincial governments. You see, even now in Shaping Canada's Future Together, if a province brings in a program that is in line with the federal government's program, the proposal is that then it will get the funds, which is very similar actually to the way medicare came in. So there may not be all that many changes, whether we have a Council of the Federation or not. It seems to be very Canadian, I think, to have the great father, the federal government, sort of looking after us. They will have the umbrella over these social programs for some time, I would think.

The Vice-Chair: Thank you very much. Are there any other questions? With that, Ms Dobson, I would like to thank you for presenting before our committee.

As Mrs O'Neill mentioned just a few moments ago, your presentation brings to an end the formal public hearings that we have been going through for the past year. It not only has been an interesting process for the members of this committee, but I am sure people have been following the proceedings of the select committee on Ontario in Confederation, as the hearings were presented live and sometimes tape-delayed, depending on conflict with the House schedule, in regard to bringing the hearings and the whole debate, I think, to all Ontarians so that they can participate and watch and try to understand and grapple with some of the issues facing us today as Canadians, amending parts of formulas that seem to be dividing some of us at times.

We have heard from a number of people. From the month of February until now we have heard from women's groups, labour, native groups, the business community, the multicultural community and the francophone community, just to name a few. I think each of them brought a different piece of the puzzle. I am speaking personally now as a member and I imagine other members would probably echo the same coming into this process: To sit on the select committee and to listen to what Ontarians have to say so that we can struggle at the end and better formulate into a report the positions of Ontarians, those different aspects that were brought from the various people in our community of Ontario really allowed me as a member and the rest of the people of this committee to piece together that puzzle, to really understand that mosaic that we talk about, what Ontario is as a province and how we fit into Confederation.

It has been an educational process for us. I think we have learned a great deal. We have been at times humbled. At times we laughed together and at times we cried together, to say the least, on a number of different issues. It is a process that I know I, and I imagine the rest of the members, will not forget for a long time. It has been everything. It is very hard to explain. It has been a very educational process.

We found there is a lot of consensus in the province of Ontario. Sometimes that consensus was somewhat guarded, sometimes it was a little bit conditional, but there was a lot more consensus out there, I think, than many of us were willing to bet on when we came into this process. We can name a few, which I am not going to get into at this point because that is the job of our report. But on many questions that I think many of us expected to hear a lot of controversy and a lot of different positions on, there was actually a lot more consensus than we really expected. I say it was somewhat guarded at times because there were also questions and conditions attached to that consensus at times. I think we have seen some of that in the constitutional conference we had just this November or October on some of those key issues.

We invite people who have been watching through the whole proceedings, if they have some final wisdom they would like to share with us, they have until December 16, 1991, to formally present to the clerk of our committee. I imagine the address will be rolled on the end of the program, so people can get the address. Address it to Harold Brown, the clerk of our committee.

As well, people should be aware that we will now be going into the final phase of our process, which is the writing of a report. This started in February with public hearings and went on to an interim report in May. We heard from people who had specific points to bring to us in the summer months, from constitutional experts to experts of all kinds of different stripes, as well as various interest groups.

We went through the process of meeting with all our provincial counterparts across this country, from the Northwest Territories all the way out to Newfoundland. As well, we had the opportunity of meeting with the federal committee and exchanging with it some of the views of people they had met with. We went on from there to our constitutional conference, where we brought together 130 people from across the province who by and large were not selected by politicians.

That really should be underscored: The process was open, within the confines that we have in the standing orders, to give as much of that process as possible back to the people. That was a risky thing to do. I think we had to struggle with it at first as politicians, turning that over to the people, but in the end the people proved that if you give the people and their wisdom the benefit of the doubt, they will often prove you right. They will often prove that they can make fairly good decisions on very sensitive and tough issues. I think the constitutional conference proved that.

The last part was basically what we have gone through tonight, which has been the opportunity once again to listen to specific people who had points to tell us in regard to the federal proposals, because obviously we need to speak about that in our final report. For that we thank you, on behalf of the select committee on Ontario in Confederation, an all-party committee that worked, I would say, admirably without any political fights.

Believe you me, in this place sometimes that is very difficult to have happen in any committee, but I can truly say all the decisions of this committee have been with unanimous consent. I cannot think of one issue where all three parties did not agree on doing one particular process or dealing with any particular issue. The select committee functioned with the unanimous support of all three parties. I think that says a lot about this political system, which sometimes we like to twist around and blame for our problems. But I think the British parliamentary system has served us fairly well and I think the work of this committee reflects that tradition quite well.

So on behalf of the select committee on Ontario in Confederation, we would like to thank you all. As I say, this brings to an end the formal part of our public hearings. We look forward to presenting a report to the people of Ontario, which should be released on February 5. With that, this committee now stands adjourned. Bonjour.

The committee adjourned at 2022.

CONTENTS

Wednesday 27 November 1991

United Senior Citizens of Ontario	C-1553
Common Agenda Alliance for the Arts	C-1556
Ontario Secondary School Teachers' Federation	C-1561
Provincial Council of Women of Ontario	C-1566

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